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# GOVERNMENT OF DEPENDENCIES

AN ESSAY

BY

SIR GEORGE CORNEWALL LEWIS, Bart.

(REVISED EDITION)

WITH AN INTRODUCTION BY

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# INTRODUCTION

THE war with Spain has devolved new responsibilities upon us and awakened new interests. With a kind of protectorate over Cuba and real sovereignty over Porto Rico and the Philippines, — a sovereignty now happily becoming every day more and more effective in the latter, — we are vitally concerned in the problem of governing foreign races and distant communities. The problem is not an easy one to solve; and thoughtful and patriotic men are already searching our libraries for guidance.

It is sixty years since the first publication of Lewis's "Essay on the Government of Dependencies." The work is characterized by copiousness and accuracy of information on the subject of which it treats, a forcible and admirably lucid style, a judicial habit of mind, a marked faculty for distinguishing the essential features of a case from its accidental and unimportant details, and a sure insight which, piercing to the very heart of the matter, reveals the essence of sovereign and dependent communities, and discloses at the same time a summary of the past and a forecast of the future experience of the relations between them. In virtue of its high qualities the book has not only lived, but it has remained a kind of classic, and the American reader who takes it up for the first time will find it as instructive and almost as fresh as the Englishmen to whom it was addressed in 1841.

I say "almost" as fresh, for of course it lacks the illustrations which the history of the last two generations affords. Nevertheless, the argument of the work is based so largely on the ideas of sovereignty and dependence, it is so completely surcharged with thought, it is so profoundly rooted in human nature, that like the ideas of

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Plato's system it might be supposed capable of standing without the confirmation of historical events. But that is not the author's way The book is not more satisfactory to the thinker than it is to the historian. It abounds in facts and illustrations drawn from the history of the dependencies both of modern European states and ancient monarchies and republics. Thus history is illuminated by thought, and thought sustained and controlled by history. In this way the author's study of the relations of a dominant and a dependent community becomes a political philosophy teaching by experience.

With the remarkable precision which characterizes the author, he has explained the subject of his volume in a brief sentence in the Preface. That subject is "the relations between two political communities, of which one is dominant and the other dependent, both being governed by a common supreme government, the one directly and the other indirectly; and the latter being governed directly by a subordinate government." India and Canada are governed directly by subordinate governments; these, however, are subject to the British Parliament which, therefore, governs India and Canada indirectly as it governs Great Britain itself directly; and the problem of the author is the relations between any two political communities of which one is thus dominant and the other thus dependent. Of course the local government of Canada is very different from the local government of India; the measure of home rule being vastly larger in the one case than in the other; and the people of Canada (at any rate apart from Quebec) came originally from Great Britain, while those of India are descended from a different race and speak a different language, so that Canada is a COLONY in the proper sense of the word, while India is not; nevertheless neither Canada nor India is an independent state; both political communities are dependent upon Great Britain; and a work on the government of dependencies must include types of subordination as far removed from one another as Canadian autonomy and Indian heteronomy. It is true that neither Canada nor India to-day means what the terms meant when Lewis wrote, and the respective governments have been pro-

foundly modified, yet so thoroughly philosophical is the author's treatment of his subject that while the reader may be conscious that Indian and Canadian examples are not up to date, he does not find on that account any break in the argument, of which those examples are merely an illustration. Of course all historical examples up to 1841 were as well known to Lewis as they are to us, and the apt use which he makes of them, especially of the Greek and Roman ones, is as delightful as it is profitable for instruction and admonition.

Apart from a preliminary and somewhat detached inquiry into the powers of a sovereign government — which deserves reading for its own sake, and on account of subsequent references to it — the present volume falls into two parts. The first part analyzes the relation of supremacy and dependence with a view to determining the ideas which it necessarily involves, the ideas which constitute it, and without which it cannot be conceived to exist. The other part considers the advantages and disadvantages which accrue to the dominant and dependent communities, respectively, in consequence of their connection with each other.

The relation of supremacy and dependence is thoroughly dissected, and all its elements laid bare. The author deserves the greater praise for his achievement as it was new and without precedent. Nor can there be much doubt that his results in general are final. It must be left to the reader to gather them And everything is so clear, so smooth, so precise, so cogent, that neither headlines nor signposts are called for. Instead, the space may be devoted, not indeed to criticism, but to supplementary suggestions.

I have spoken of Lewis as a great political thinker, who might almost soar above the commonplaces of history. Yet political philosophy, like moral or metaphysical, must keep in the closest and most vital touch with facts, if it is to be of any value. And I have already alluded to the interfusion of reflection and history in the present volume. But the development of British colonial self-government and the grant of home rule to the colonies is subsequent to the date of Lewis's volume. The

author wrote (Chap. II., Sec. 2): "Since the close of the American war, it has not been the policy of England to vest any portion of the legislative power of the subordinate government of a dependency in a body elected by the inhabitants." To-day Canada and Australia are self-legislative and self-governing; and the autonomy they enjoy is the accepted model for all the colonies, in the proper sense of that term, namely, the countries inhabited exclusively or predominantly by people of British descent. This change in polity necessitates a change in the thought and definition of the relation of a dependent community to a sovereign state. Lewis is too apt to associate with the latter the idea of universal control over its dependency. Yet Canada and Australia are to-day in most matters independent of Great Britain. Clearly, therefore, there may be dependent communities of which the dominant country has only partial, and indeed very limited, control. In such cases the sovereign country is neither a universally superintending power, as Burke conceived the imperial legislature of Great Britain, nor yet a universally controlling power, as Lewis pictures it after the pattern of British experience during the first half of the nineteenth century. The dominant state may superintend and control only a few things, and even in these its functions may be rather apparent than real. Hence it results that the conception of "a self-governing dependency" is not to-day, as Lewis asserts it was in 1841, "a contradiction in terms." (See Chap. X.)

There is another point at which Lewis's conception of the relation between dominant and dependent communities might have been modified by larger historical knowledge or experience. Not much attention was paid to American history in Great Britain sixty years ago. Had it been otherwise Lewis would scarcely have failed to notice our territories as a type of dependent government. As it is he ignores not only that particular type of dependency, but also the federal principle itself, which is full of promise in its application to the government of dependencies. For the federal principle involves the division of the functions of government between the central power or union and its constituent units or states

and, in the United States of America, it also involves the supremacy of each entity within its own assigned sphere. The territories of the American Union are supreme so long as they keep within the jurisdiction assigned them by their constitutions; and though in some cases (but not in all) territorial enactments are liable to congressional veto, this reservation of power is seldom exercised. Under other names, and with a much less complete political organization, the same phenomenon has developed in the greatest self-governing colonies of the British Empire. Were Lewis's book rewritten, therefore, in the light of American and recent British history, we should hear more of home rule in the dependencies, of the division of the functions of government between the dominant and the dependent community, and the complete control of each within the field assigned to it. Such subordinate governments, independent within their own spheres, might be set up in the sovereign country itself — as though Scotland, Ireland, Wales, and England should each become states of a federal union; and if the colonies were admitted on equal terms, the result of this process of differentiation and integration would be a reorganized British empire in which all parts were equally dependent and equally independent. That is what we see in our own republic, though the territories are, in all that pertains to federal jurisdiction, nothing but dependencies. Lewis recognizes (Chap. IV.) that science and invention make large empires possible, since they enable the supreme government to subject a larger extent of territory or more distant territory to its immediate action; but he does not see that without territorial home rule the superincumbent sovereignty would collapse of its own weight. The "immediate action" of the sovereign government in the exercise of the general functions of government must be supplemented by the "immediate action" of the local or territorial government in the discharge of the remaining and much more numerous functions of government. The sovereignty of the dominant country is not impeached because it is not sovereign in everything and everywhere. Sovereignty, in the municipal, if not in the international sense, may be divided between the domi-

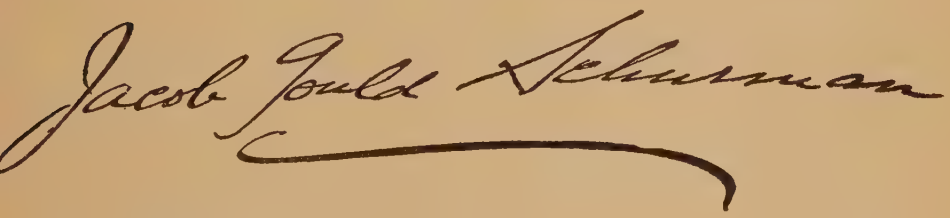
nant and the dependent communities. And this lesson of American and of recent British history is not found as clearly as one might desire in Lewis's work.

The second part of the volume which considers the advantages and disadvantages arising to the two related communities from their connection with each other calls for less comment. I think that the experience of the last sixty years emphasizes more strongly than this author does the value to the sovereign country of naval and coaling stations in its outlying dependencies. It is generally believed that Great Britain has in this respect a great advantage over all other nations. But in general Lewis's treatment of the advantages and disadvantages of dependencies is exhaustive and satisfactory. No great empire, however, has been acquired as a result of mere utilitarian considerations. And none has ever been surrendered because it proved unprofitable. Sometimes duty forbade; oftener vanity. The refrain of the history of colonizing nations is: Now abideth these three,— duty, interest, and vanity; and the strongest of these is vanity.

The book abounds in observations of great practical value to Americans at the present time. Take some of the warnings against innovations in the laws, customs, and language of a dependency scattered through Chapters IX. and X. "No custom ought to be changed simply on the ground that it is repugnant to our habits and feelings." "No law ought to be changed, and no custom ought to be abolished, without some special reason." And as to language, the attempt to make a sudden change is declared still more inexpedient. Those who would introduce English into the Philippines mostly forget the patent truth that "the great mass of mankind never acquire a language by study; they only know the language they imperceptibly imbibe during infancy and childhood," and that for a government to change suddenly the language of its subjects is as impossible as "to add a cubit to their stature or to give them a sixth sense." Nor should these golden words of final wisdom be ever forgotten: "It is obvious that the best mode of incorporating a body of people with the rest of the empire is to render them contented and happy; and that any measure

which renders them discontented is likely to prevent that incorporation."

I hope I have said enough to show that this is a great and fruitful work. No other book, in my opinion, can be so helpful to us in dealing with the new political problems created by our acquisition of the insular possessions of Spain. A valuable companion volume is Seeley's "Expansion of England." But Lewis's work should be studied by all thoughtful Americans who are struggling with the problem of governing our new dependencies. It should be a text-book in every college and university that aims at the enlightenment of public opinion and the education of its students in the ways of intelligent citizenship. It is a truly gigantic task the United States has recently undertaken. The governing of Porto Rico and the Philippines — to say nothing of Cuba — is likely to modify the character of our institutions. Either they will be governed as permanent dependencies or they will be incorporated in our federal union; those men of other races and color will be either our *protégées* or our partners. Whichever alternative we adopt, it will be a new and momentous departure. But history is full of change. Americanism, however, is another name for faith and hope, and to add knowledge thereunto is the purpose of this edition of Lewis's "Essay on the Government of Dependencies."



Cornell University, March 11, 1901.

# AUTHOR'S PREFACE

THE subjects comprised within the science of politics may be conveniently distributed under the three following main divisions:

1. The nature and form of a sovereign government, and its relations with the persons directly subject to it.

2. The relations between the sovereign governments of independent communities; (viz, international law or morality).

3. The relations of a dominant and a dependent community; or, in other words, the relation of supremacy and dependence.

The first of these three subjects comprehends the nature, origin, and form of a sovereign government, and its relations with its immediate subjects constituting a single political community. The various departments of this extensive subject have been treated by a long series of writers, ancient and modern, beginning with Plato and Aristotle, and reaching to the present time.

The second subject, comprehending the relations between the sovereign governments of independent states, has been treated by a numerous class of modern writers, from Grotius downward.

The third subject is the relation of supremacy and dependence: in other words, the relations between two political communities, of which one is dominant and the other dependent; both being governed by a common supreme government, the one directly and the other indirectly; and the latter being governed directly by a subordinate government.

The third, although it coincides in some respects with the other two subjects, is nevertheless essentially distinguished from both of them. With the first, it comprehends a supreme government, but considers it

only in its relations with a community which it rules indirectly, and not in its relations with its immediate subjects. With the second, it considers the relations of separate communities, but differs from it, in not considering the relations of independent communities.

The third subject has not hitherto, as far as I am aware, been professedly examined in a separate investigation. Whenever the subject has been considered by political writers, it has been considered only incidentally, and in combination with colonization, foreign trade, and other questions belonging to the province of economical science. This incidental consideration of the subject, in combination with other matters having no essential affinity with it, has naturally thrown over it a general indistinctness and obscurity. Thus, for example, the idea of a DEPENDENCY is by many writers confounded with that of a COLONY; a confusion which renders it nearly impossible that a clear and precise conception of the political relation in question should be formed.

The following essay is intended to explain the third of the three subjects above adverted to, viz, the nature of the political relation of supremacy and dependence, and to develop some of the principal consequences which that relation involves.

For the purpose of elucidating fully the ideas included in the notion of a SUBORDINATE GOVERNMENT (upon which the definition of a dependency adopted in the ensuing pages is founded), I have prefixed to the essay an inquiry, in which I have attempted to explain the distinction between supreme and subordinate powers of government, together with some other questions related to it. This preliminary inquiry is detached from the essay, and the latter may be read without it.

The essay itself falls into two parts. One part considers the ideas which the relation of supremacy and dependence necessarily implies, and without which it cannot be conceived to exist. The other part considers the advantages and disadvantages arising to the two related communities from their connection with each other. The expediency or inexpediency of this connection to each of the two communities is determined by facts which vary

infinitely, and which cannot be comprehended in any general expression. Nevertheless there are certain leading facts which, though not universal, reappear with such steadiness and uniformity in different dependencies, that they serve to throw much light on the expediency of this relation to the related communities; and general inferences can be drawn from them, which will materially assist in determining how far the relation is expedient in any individual case.

Whatever advantages may belong severally to monarchical, aristocratical, or democratical institutions, it cannot be overlooked that the chief nations of Europe and America now keep nearly abreast in the march of civilization, notwithstanding the diversity in the forms of their supreme governments. Moreover, it can scarcely be denied that the ulterior progress of these nations mainly depends upon the nature of the opinions prevailing among the bulk of the people; that where the public opinion is unenlightened, no political forms can be an effectual security against unwise and mischievous exercises of the powers of government; and that where the public opinion is enlightened, political forms lose a large portion of their meaning and importance.

One of the main obstacles to the formation of an enlightened public opinion, by a calm examination of important social facts and principles, as well as to the creation of habits of order, industry, and forethought, to the accumulation and diffusion of wealth, and to the gradual development of a healthier state of society, is produced by the occurrence of wars between civilized nations. Wars of this sort destroy wealth, divert labor from useful objects, disturb commerce and credit, arrest the progress of internal improvements, shake the confidence of men in one another, and in their government, and paralyze the energy of the wise and good by making them despair of the cause of human advancement.

The only effectual security against the occurrence of such wars is to be found in an improved international morality, and a more faithful observance of its maxims. But though such wars are mainly to be prevented by an

improvement in the relations of independent communities, they are also in some measure to be prevented by an improvement in the relations of dominant and dependent communities. If, therefore, the following essay should assist in explaining the nature of the relation between a dominant and a dependent community, in showing the extent of the advantages which the former community can derive from its supremacy, and in indicating the sources of the disputes likely to arise between them, it would tend to diminish the chances of the greatest calamity to which the civilized world is now exposed.

It might likewise contribute to the same end, by exhibiting the nature and extent of the political evils which are inherent in the condition of a dependency. If the inhabitants of dependencies were conscious that many of the inconveniences of their lot are not imputable to the neglect, or ignorance, or selfishness of their rulers, but are the necessary consequences of the form of their government, they would be inclined to submit patiently to inevitable ills, which a vain resistance to the authority of the dominant country cannot fail to aggravate.

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# INQUIRY

INTO THE

# POWERS OF A SOVEREIGN GOVERNMENT.

SINCE a dependency is a territory placed under a subordinate government, the subject of the following Essay renders it necessary for me to investigate the nature of a subordinate government.

In order to understand the nature of a subordinate government, it is necessary to understand the distinction between supreme and subordinate powers of government, and the nature of the delegation by which the latter powers are created. This distinction is closely connected with the distinction between the legislative and executive powers of government; and, indeed, has been considered by some writers as nearly identical with it. Since these questions have not been examined with sufficient fullness for my present purpose, I propose, before entering upon the subject of the following Essay, to inquire into the nature of the powers of a sovereign government, and the manner in which those powers may be delegated.

The first question to be considered is, what is the extent of the powers of a sovereign government?

It may be said generally that a sovereign government can do all that can be done by the united power of the community which it governs; or, more strictly, that it can do all that can be done by so much of the power of the community as it can practically command.

The power of a sovereign government has not a LESS extent than that which has been just stated.

It can seize persons, imprison, put to death, levy war, carry on trade, build, make roads, maintain schools, coin money; and, in short, do any other of the innumerable

acts which may be done by a society of men who are not impeded or compelled by superior force.

It is an error to suppose that a sovereign government is subject to any other than moral restraints, and that it does not possess an absolute and despotic power. All attempts to limit legally the power of a sovereign government by positive laws, promises, compacts, and constitutional checks or balances, are nugatory. It is likewise absurd to deny to a sovereign government the power, or, as it is commonly called, the RIGHT of doing certain acts, such as inflicting death or bodily pain, of taking property, etc. When the right of a sovereign government to do any act is denied, nothing more is meant than that the government ought not, in the speaker's or writer's opinion, to do the act. This expression is, therefore, merely a concise formula for assuming the question at issue. The opinion just adverted to is merely a variety of the ancient notion that the laws of a bad and oppressive government have no binding force, and, therefore, are not laws. A conversation on this subject, said to have taken place between Pericles and the young Alcibiades, is reported in Xenophon's "Memoirs of Socrates." Pericles at first answers the inquiries of Alcibiades correctly, by saying that every decree of the sovereign person or body in a State is law; but he afterward (incorrectly) retracts this opinion, and says that the legislative acts of a tyrant, the legislative acts of an oligarchy to which the bulk of the people do not consent, and the legislative acts of a democracy to which the rich do not consent, are not laws.

On the other hand, the power of a sovereign government has not a GREATER extent than that which has been stated.

For example, it cannot suddenly augment the quantity of food in a country, except by importation from abroad, and, consequently, it cannot change scarcity into plenty, if the foreign supplies should be scanty and dear.

The power of a sovereign government is further limited to that portion of the force of the community which it is able practically to command. The question whether it is physically possible for a law to be executed,

is different from the question whether a law is likely to be executed. Thus it would be physically impossible to execute a law for changing the course of the seasons, or the height of the tides. On the other hand, there are many laws which might be carried into effect with the universal consent of the community, but which a sovereign government, from the unwillingness of a large portion of the community to submit to them, would be unable to enforce. Such are, for example, over severe penal laws, vexatious revenue laws, usury laws, laws prohibiting the export of corn, laws regulating prices and wages.

It is also to be observed, that there are acts possible to some sovereign governments which are not possible to others. Since the power of a sovereign government is limited to the united forces of the persons forming the community which it governs, it is natural that many things should be within the power of the government of a large and rich nation which are not within the power of the government of a small and poor nation. Again, the progress of civilization increases the power of governments, as well as of persons, or bodies of persons, in a private capacity. Thus many a small and feeble State could now produce results which would have surpassed the powers of the most mighty nations of antiquity.

Blackstone, in describing the powers of the British Parliament (which is the sovereign government of the British Empire), says, that "it can do everything that is not naturally impossible; and, therefore, some have not scrupled to call its power by a figure rather too bold, the omnipotence of parliament." The, phrase "omnipotence of parliament" (as Mr. Christian has remarked on the passage in Blackstone), "signifies nothing more than the supreme sovereign power of the state, or a power of action uncontrolled by any superior." The remarks which we have made above, likewise, indicate the limitations with which the statement must be taken, that Parliament can do everything which is not NATURALLY IMPOSSIBLE.

The next question to be considered is, how may the powers possessed by a sovereign government be exercised.

The modes by which a sovereign government may exercise its powers can be conveniently reduced to the four following heads: First; it may exercise its powers in the way of legislation. Secondly; it may exercise its powers by special commands or acts intended to carry into effect a pre-existing law. Thirdly; it may exercise its powers by special commands or acts not intended to carry into effect a pre-existing law. Fourthly; it may exercise its powers by inquiring into some fact or facts, for the purpose of guiding its conduct in some measure or proceeding falling under one of the three heads just enumerated. These four powers may be respectively styled the LEGISLATIVE, EXECUTIVE, ARBITRARY, and INQUISITORIAL powers of a sovereign government.

We will now proceed to consider the nature of each of these powers.

First. A sovereign government may issue a general command; that is, make a law, properly so called; or it may declare a general intention of doing certain acts, or of pursuing a certain course of conduct; which declaration is also commonly called a law. For example, it may issue a general command to its subjects not to kill, or take the property of others, excepting under certain circumstances; or it may declare a general intention of performing certain services for the public, such as the conveyance of passengers, goods and letters, and the maintenance of roads, bridges, lighthouses, harbors, hospitals, schools; or of supplying the public with certain commodities, such as tobacco, gunpowder, or salt.

A sovereign government may issue a general command, either independently of any other general command, or for the purpose of carrying into effect another general command which it had previously issued; that is to say, a law may be made either for its own sake, or for the purpose of carrying another law into effect.

Laws made for the purpose of carrying other laws into effect are often made by subordinate legislatures, as will be shown presently.

Secondly. A sovereign government may issue a special command, or it may do an act directly affecting some person or persons, and not involving a general command.

If the special command or act be founded on, and be in pursuance of a general command previously issued, or a general declaration of intention previously made, by such government, the command or act is styled EXECUTIVE.

Thus, if a sovereign government has issued a general command, or law, prohibiting its subjects from killing or taking the property of others, except under certain circumstances, and announcing a certain punishment for the contravention of such law; then, if some person should contravene any of its provisions, the government proceeds to issue certain special commands, or to do certain acts for the purpose of inflicting upon him the punishment in which the sanction of the law consists. When a crime has been committed, the steps which the government takes for detecting, apprehending, detaining, trying, convicting, sentencing, and punishing the supposed offender by means of policemen, public prosecutors, judges, and jailers, or other ministers of criminal justice, consist in a series of special commands or acts in execution of existing laws. In like manner, when a sovereign government has declared a general intention of pursuing a certain course of conduct, it proceeds to issue the special commands, or to do the acts, which may be necessary or expedient for accomplishing its purpose. For example: if a government has declared its intention of making war against another independent State, of carrying passengers, goods, or letters, of trading in a certain commodity, of issuing money, or of relieving all destitute persons found in its dominions, it employs persons, makes purchases of goods, and enters into the other specific arrangements which are requisite in order to enable it to carry these several intentions into effect.

In every case in which a sovereign government issues a general command or law, or makes a general declaration of intention, it supposes that such general command or declaration will be carried into execution by special commands or acts. No general command or law of a sovereign government would be obeyed, unless the persons subject to it thought that the government was prepared, in case any person should disobey it, to inflict upon him

the pain in which its sanction consists, and unless they saw its sanction actually inflicted upon the persons who disobey it. Again, in every case in which a sovereign government makes a general declaration of intention, such declaration would be nugatory, unless the government adopted the means requisite for carrying its intention into effect. Consequently, an act of legislation by a sovereign government implies the necessity of future executive acts; and every executive act presupposes a prior legislative act which is carried into execution. Unless a sovereign government were prepared to carry its general commands or laws, and its general declarations of intention, into effect, by means of special commands or acts, its general commands or declarations would be nugatory. Its general commands would lose their imperative character, and would become mere recommendations or rules of positive morality, having for their sanction as much of the public opinion as the government could enlist on its side. Its general declarations of intention would become mere voluntary promises, or pollicitations, which it would take no steps to perform. On the other hand, an executive act implies the existence of a prior general command or general declaration of intention; in other words, of a prior legislative act, which is to be carried into execution. It follows, therefore, that the legislative and executive acts of a sovereign government mutually imply each other.

The reasons which render it expedient for a sovereign government to issue general commands or laws will be stated lower down. The executive officers of a sovereign government issue special commands in order to avoid the necessity of acting without a previous command; that is, the necessity of applying force. For example, a tax gatherer orders a man to pay a certain sum which he owes to the government as a tax; a policeman orders a suspected criminal to walk to gaol; in both these cases a special command is first issued in order to avoid the necessity of compelling the payment or imprisonment by force. In like manner, a sovereign government may perform certain acts, not involving the use of force, in order to avoid the necessity of using

force. For example, a government desirous of obtaining men or supplies for an army or navy, may pay a bounty to recruits, or may purchase supplies at the market price, instead of levying men by impressment, or seizing and taking goods by force.

Executive commands or acts may, in general, be divided into the two classes of JUDICIAL and ADMINISTRATIVE.

A JUDICIAL proceeding is a declaration by a competent authority, after preliminary complaint and inquiry, that a person has or has not brought himself within the terms of a certain penal enactment, or that he has or has not a certain legal right or obligation which another disputes with him.

An ADMINISTRATIVE proceeding is for the purpose of carrying the law into effect, where there is no question about the legal culpability, or dispute about a legal right or obligation of a person. The distribution of titles or rewards, the collection of the taxes, the purchase of articles for the army or navy, the legal relief of a destitute person, the conveyance and delivery of letters through the public post office, the apprehension and prosecution of a person accused of a crime, the execution or imprisonment of a convict, the making and issuing of money, the maintenance of places of education, the keeping of a public registry of lands, deeds and wills, births, deaths, and marriages, are instances of administrative acts.

In an administrative proceeding the government functionary acts or may act spontaneously; in a judicial proceeding he does not act until he is set in motion by an accusation or plaint addressed to him. Thus the power of a visitor of a college in an English university, or of a charitable foundation, which may be exercised at his own pleasure, and without any complaint being preferred to him, is to this extent administrative and not judicial.

Moreover, in order to found a judicial proceeding, it is necessary, not only that an accusation or plaint should be addressed to the judge, but also that the party who is accused or complained of should have an opportunity of defending himself against such accusation or plaint;

whereas, an administrative proceeding may take place without the necessity of allowing any such opportunity of explanation to the persons whom it may affect.

The only case in which a judicial proceeding is dispensed from these preliminary conditions is where an offense is committed in the presence and within the sight of a judge. Under these circumstances, the usual requisites of an accusation and an opportunity of defense are sometimes dispensed with, and the judge acts at once with an administrative authority.

If no crimes were committed, and if there were no disputes about rights and obligations, there would be no need of judicial acts; the functions of the judge would never be called into action. But the machine of civil government would stop, if the administrative functionaries did not act; if, for example, the taxes were not collected. It is, therefore, necessary that an administrative functionary should be able to initiate his interferences, and not have to wait, like the judicial functionary, until he should be set in motion by one of the public.

Hence, the term ADMINISTRATIVE may be properly confined in accordance with the ordinary usage, to executive acts not judicial. In judicature proper, there is no administration, no MANAGEMENT, as there is in finance, public works, government lands, relief of the poor, keeping of schools, carriage of letters, military and naval organization. A judge hears and determines, and orders his decision to be carried into effect. He executes the law, but administers nothing.

It should, however, be observed that functionaries, whose business is principally judicial, sometimes perform administrative acts, and that functionaries, whose business is principally administrative, sometimes perform judicial acts. Thus the administration of the property of minors, lunatics, bankrupts, and intestates, and the appointment of new trustees, though performed in England by various courts, are not judicial functions. Indeed, all acts of voluntary, as opposed to contentious, jurisdiction are properly administrative. On the other hand, judicial decisions are sometimes made by public officers, whose ordinary functions are administrative; for

example, the decisions imposing fines and forfeitures made by the revenue boards of this country.

Some remarks will be made lower down on the exercise of legislative and executive powers by the same functionary.

It may be here observed, that the confusion which prevails concerning the supposed difference between a limited monarchy and a republic, is in some measure connected with the distinction between legislative and executive powers. It seems to be thought that if a king is a merely executive officer, the government is republican; but that if a king has a share in the legislative sovereignty, the government is monarchical. This notion is in truth erroneous; since a king who has only a share in the legislative sovereignty is properly not more a monarch than a king who has no such share; but it is founded on a perception of the fact, that the legislative are more important than the executive functions of government.

Thirdly. A sovereign government may issue a special command, or do an act, not founded on, or in pursuance of, a general command previously issued, or a general declaration of intention previously made, by such government. Such a special command or act may be styled ARBITRARY, inasmuch as it proceeds from the *arbitrium* of the sovereign person or body.

For example, a command issued by a sovereign government, prohibiting the future exportation of all corn, or all implements of war, would be general, and, therefore, a law. But a command issued by a sovereign government, prohibiting the exportation of all corn, or all implements of war, then shipped and in port, would be special and arbitrary, and therefore, not a law. Again, a special command or act inflicting a punishment upon a single person, or subjecting him to some legal disqualification, would, if it were in pursuance of an existing law, be executive, but, if it were not in pursuance of an existing law, it would be arbitrary.

Arbitrary commands, when issued by the sovereign body of a republic in a legislative form, were known to the Greeks by the name of *psephismata*. The use of

*psephismata* was frequent in several of the Greek democracies in the age following the Peloponnesian war, and the administration of a government by means of them was considered characteristic of a democracy. In Athens, the frequent recourse to arbitrary *psephismata* was partly owing to the restraints imposed by the forms of the Constitution upon new legislation; restraints which were intended to check the popular tendency to innovation, and to assist the aristocratic party or class in maintaining the existing laws unchanged. The arbitrary commands of the sovereign government in a monarchy or aristocracy appear to have had no peculiar name in Greece; although they were, doubtless, at least as proportionally frequent as the arbitrary commands of the sovereign assembly in a democracy.

Among the Romans an arbitrary command issued by the sovereign government in a legislative form was styled a *privilegium.* The name *privilegium* is ancient in the Roman law, since it occurred in the twelve tables, which contained a clause condemning the use of them. A *privilegium* properly meant an arbitrary measure passed by the sovereign assembly of the people, which affected a single person. An arbitrary command is usually directed against one or more persons by name, and does not include a number of persons determined by a general description. A command which is confined to a single person is not, however, necessarily arbitrary, although it may not be founded on an existing law. For example, a protection to a person against his ACTUAL creditors would be arbitrary, but a similar protection against ALL HIS FUTURE creditors would be general, and, therefore, a law.

A *privilegium* having originally meant an arbitrary command, or a peculiar law, affecting a single person, has subsequently come to mean a peculiar law affecting a class of persons; and thus we speak of the privileges of the clergy, the nobles, the army, and members of the supreme legislature. In England, the powers which either House of Parliament can exercise by itself and of its own authority, are called the privileges of such House of Parliament.

Examples of arbitrary commands in the English government are furnished by bills of pains and penalties, bills of attainder, divorce bills, and private estate bills, the power of pardoning convicts, or of commuting their sentences, which is exercised by the crown, and the general power of dispensing with the laws in individual cases, which the crown formerly claimed. The powers of dispensing with the rule respecting the age of marriage, and with certain prohibitions respecting marriages between kindred, which are reserved to the king by the French civil code, are also arbitrary. (Art. 145, 164). The *léttres de cachet* under the old French monarchy likewise afford a well known example of an exercise of arbitrary power. Indeed, arbitrary interferences with the domestic affairs of private persons, especially for the purpose of maintaining (what was called) the HONOR OF FAMILIES, were practiced to a great extent by the governments of the continental states up to the period of the French Revolution.

The popular notion of EQUITY, as administered by a court of justice, likewise supposes an arbitrary power, or, in other words, a power of deciding without regard to existing laws or rules of law.

The original idea of equity makes it a mode of interpreting written laws: *viz.*, a departure from the literal meaning of the words of a law, for the purpose of giving effect to its supposed general scope or purpose.

"Equity" (says Aristotle), "is justice not according to the law, but in correction of the law. The cause of this is, that a law is general, and there are some things which it is impossible to express in general terms. Wherever, therefore, it is necessary to use general terms, and it is impossible to do so with accuracy, the legislator in drawing a law makes use of terms which provide for the ordinary cases, knowing that some extraordinary cases are left unprovided for. And in so doing he acts rightly; for the defect is not in the law, or in the lawmaker, but in the nature of the subject. Consequently, whenever a case arises which is included in the general terms of the law, although not falling within its scope, the defect which arises from the generality of the terms

of the law ought to be remedied in a manner which the legislator himself would approve, if he were present, and which he would have provided for in the law if he had foreseen the case. Equity, therefore, is the correction of the law where it is defective through the generality of its language. Accordingly, there are some things to which a law is inapplicable, and in which it is necessary to resort to a *psephisma;* for that which is indeterminate cannot be governed by a general rule."

All sovereign governments have found it necessary to leave certain matters to the *arbitrium boni viri*, or the discretion of the judge. On account of the defects of every system of jurisprudence, (some arising from the imperfection of language, and others from want of skill or attention in the law-maker), many of the decisions of courts of justice are arbitrary in the individual case, and have, as respects that case, an *ex post facto* operation; although the decision when once made may establish a rule for future cases.

The common notions respecting equity go still further, and seem to suppose an administration of justice, not according to pre-established rules of law, but according to certain obscure sentiments of moral justice, awakened in the mind of the judge by the circumstances of the individual case, and by the general character and conduct of the litigant parties, or of the accused person.

Every government, whether monarchical, aristocratical, or democratical, may be conducted arbitrarily, and not in accordance with general rules. There is not, and cannot be, anything in the form of any government, which will afford its subjects a legal security against an improper, arbitrary exercise of the sovereign power. This security is to be found only in the influence of public opinion, and the other moral restraints which create the main differences in the goodness of supreme governments. The distinction between a government administered according to law, and a government not administered according to law, was familiar to the ancient politicians, and is pointed out by them in respect to each of the three forms of government. Aristotle respectively divides aristocracies and democracies into two classes according

to the principle just stated; and his description of a democracy not administered according to law is so explicit that I am tempted to transcribe it here.

"One species of democracy" (he says), "is where the public offices are open to every citizen, and the law is supreme. Another species of democracy is where the public offices are open to every citizen, but where the people and not the law is supreme. The latter state of things occurs when the government is administered by *psephismata*, and not according to laws, and it is produced by the influence of the demagogues. In democracies administered according to law there is no demagogue: the most distinguished of the citizens presiding in the assembly; but where the laws are not supreme, demagogues arise. For the people become as it were a compound monarch, each individual being only invested with power as a member of the sovereign body; and a people of this sort, as if they were a monarch, seek to exercise a monarchical power in order that they may not be governed by the law, and they assume the character of a despot; wherefore flatterers are in honor with them. A democracy of this sort is analogous to a tyranny (or despotism) among monarchies. Thus the character of the government is the same in both, and both tyrannize over the superior classes, and *psephismata* are in the democracy what special ordinances are in the despotism. Moreover, the demagogue in the democracy corresponds to the flatterer (or courtier) of the despot; and each of these classes of persons is the most powerful under their respective governments. It is to be remarked that the demagogues are, by referring everything to the people, the cause of the government being administered by *psephismata*, and not according to laws, since their power is increased by an increase of the power of the people, whose opinions they command. The demagogues likewise attack the magistrates, and say that the people ought to decide, and since the people willingly accept the decision, the power of all the magistrates is destroyed. Accordingly, it seems to have been justly said that a democracy of this sort is not entitled to the name of a constitution, for where the laws are not

supreme, there is no constitution. In order that there should be a constitution, it is necessary that the government should be administered according to the laws, and that the magistrates and constituted authorities should decide in the individual cases respecting the application of them. So that if democracy is a constitution, it is evident that this state of things, in which the entire government is administered by *psephismata*, is not properly a democracy, inasmuch as no *psephisma* can be general."

In the preceding passage Aristotle describes the TYRANNY of the Greeks, or despotism, as corresponding to the democracy which is administered arbitrarily; and in another place he distinguishes TYRANNIES, or despotisms, as being governed according to the mere *arbitrium* of the prince, from kingly monarchies which are governed according to law. Other ancient writers likewise speak of the difference between the government of a king and a tyrant (or despot) as consisting in this, that the former governs according to law, and the latter against the law. Montesquieu's distinction between a monarchy and a despotism is founded upon a similar principle. "A monarch (he says) governs by fixed and established laws; a despot governs according to his will and caprices, without laws and rules." And again, he says, "In despotic states there are no laws, the judge is his own rule. In monarchical states there is a law, and where it is precise, the judge follows it; where it is not, he tries to discover its spirit." Indeed, monarchies strictly so called, and above all, the Oriental monarchies, have been so characterized by arbitrary rule, (particularly as regards arbitrary arrests and special interferences with the regular administration of justice), that the class of monarchies entitled despotisms has been considered by many writers as mainly distinguished by the arbitrary nature of the government.

The expediency of administering a government according to general rules is now recognized in all civilized nations; nevertheless, the importance of adhering to rules is so great, that it may be useful to state the main reasons why legal is preferable to arbitrary government.

In the first place, the establishment and announcement of general rules by a government for the guidance of its acts, enables its subjects to determine their conduct accordingly, in some of the most important concerns of life. The measures which a man takes in the management or disposition of his property must mainly depend on his expectations as to the future conduct of the government in enforcing contracts, in protecting industry or trade, and in distributing his property among his survivors. So manifestly expedient are general rules on such subjects as these, that the rudest and most arbitrary governments have, by means of courts of justice, administered, with more or less regularity, certain uniform laws with respect to contracts and the succession of property. It is manifest too that in all societies which are above the lowest degrees of barbarism, such acts as intentional homicide, and robbery, must be frequently punished, and that therefore any person guilty of one of them must be exposed to a considerable chance of punishment.

In civilized countries, the utility of a great part of the civil law mainly rests on this ground. However imperfect its rules may be, they are at any rate rules, on the enforcement of which all persons may calculate, and by which they may, therefore, guide their conduct.

This reason, it may be observed, equally proves the inexpediency of *ex post facto* laws, (or laws having a retroactive operation, and which consequently nobody could calculate upon,) and of government by arbitrary decision in individual cases. But an *ex post facto* measure, though it may be, and often is, special and arbitrary, may also be general, and therefore a law.

Secondly. The previous announcement of the rules by which a government is guided, tends to subject its spirit and conduct more effectually to the check of public opinion. There is a great difference between deliberate, universal, and avowed, and unpremeditated, particular, and casual rapacity and injustice. Many governments, which habitually act toward their subjects in the most oppressive manner, would be ashamed to reduce the maxims by which they are in fact guided, into the form

of a law, and to publish it to their subjects and the whole civilized world. Governments of this kind usually tyrannize over their subjects by arbitrary acts, and disregard the laws in which they pay an empty tribute to humanity and justice. It may be further remarked, that when a government announces its intentions of heavily taxing and otherwise oppressing its subjects, and publishes the means by which it will carry these intentions into effect, its subjects can, to a certain extent, guard themselves, by evasion and fraud, against its acts. And if the oppression is likely to be great, they will be more likely to combine in order to resist by force, if they see that the measure affects all at the same time. If the oppression were irregular, uncertain, and partial, it would be far more difficult to excite a whole community or a considerable part of it, to insurrection against the government.

The severe laws enacted by some of the southern States of the American Union* against slaves prove the universality and intensity of the feeling in favor of slavery which prevails in those States. If the authors of those laws were ashamed of them, they would probably seek to attain their ends in a less open and direct manner. So likewise the criminal code of Maria Theresa, with its minute descriptions and engravings of the tortures which it sanctioned, produced a general feeling of disgust; although it did not extend the practice of torture in the Austrian States, but only sought to prevent its capricious and unequal application.

It is the more important that the grounds of the expediency of legal, and of the inexpediency of arbitrary government, should be clearly understood, since no distribution of the sovereign power, no arrangement of constitutional balances or checks, can prevent arbitrary government and secure an adherence to rules. It

*On the first of January, 1863, President Lincoln proclaimed the emancipation of the slaves in the Insurgent States, and slavery was finally abolished throughout the United States by the thirteenth amendment to the Constitution, ratified on the eighteenth of December, 1865. See Professor Bryce's «American Commonwealth,» vol. i., pp. 70, 591.—Ed.

appears, indeed, to be a common notion, both among ancient and modern writers, that laws are a restraint upon a sovereign government, from which it is unable, however desirous, to escape, if the constitution be well framed or balanced; and that it is a sign of a bad constitution of the government, and not merely of bad opinions in the sovereign person or body, if the government be not administered according to law. It seems to be thought that, by submitting to be guided by certain general rules, the person or persons composing a sovereign government lose their *arbitrium* or free will, and become subordinate to a superior power. A similar meaning is implied in expressions, such as "the people are subject to the law and not to men," "the law governs and not men," "the rulers are the servants of the law," "the law is master." Understood literally, statements of this sort convey an erroneous impression, since it is certain that in every sort of government the sovereign power must be legally unlimited, and that every government must be conducted by men.

The meaning which such figurative expressions convey merely is, that a sovereign government, having prescribed certain rules for the guidance of its own conduct and that of its subjects, observes and enforces those rules, and never alters them without giving notice of the alteration. In this respect, a government which voluntarily conforms to rules which it has itself laid down, and which no political superior can enforce, may be properly said (as St. Paul says of the virtuous gentile) to be "a law unto itself." Aristotle, indeed, carries the comparison farther, inasmuch as he compares the incontinent man, whose desires are too strong for his principles, to a State which, although it has good laws, observes them not, but transacts all its affairs by means of special decrees; whilst he compares the thoroughly depraved and unprincipled man to a State which abides by its laws, but has bad laws.

From the manner in which arbitrary or despotic acts are sometimes opposed to legal power, it must not be inferred that when an act of a sovereign government is not according to law, it is therefore illegal. No act of a

sovereign government can be illegal, because it is itself the measure and standard of legality; but, as I have already explained, a sovereign government may do an act or issue a special command not founded on a pre-existing law. The error of denying the legality of the arbitrary acts of a sovereign government or of saying that a government administered arbitrarily is not a government, and that a nation governed arbitrarily is not a nation, is akin to the error, already mentioned, of affirming that bad laws have no binding force, and that a law must, in order to be a law, produce beneficial effects, or at least have a beneficial tendency.

A similar confusion appears to prevail respecting the distinction between an ABSOLUTE and a LIMITED monarchy. It seems to be sometimes thought that the distinction between an absolute and a limited monarchy consists in this: that an absolute monarch governs arbitrarily, whereas a limited monarch governs according to laws. It is true that an absolute monarch (or a monarch properly so called) may, and indeed often does, govern arbitrarily; and it is true that in a limited monarchy (or a republic of which a king is head), the king, having only a share of the sovereign power, cannot in general alter or depart from the laws without the consent of the remainder of the sovereign body. But an absolute, or proper, monarchy might be governed according to the existing laws, as much as a so-called limited monarchy. The distinction between these two sorts of monarchies really consists in the number of persons in whom the sovereign power is vested. In an absolute or pure monarchy, one person possesses the entire sovereign power; in a monarchy which is said to be limited, the sovereign power is divided between the king (who is called the monarch), and other persons; that is to say, a limited monarch is not properly a monarch.

This confusion is thickened by the exemption from legal accountability which a king who possesses only a share of the sovereign power, sometimes enjoys in common with a king who possesses the entire sovereign power.

A sovereign body is legally unaccountable for every act done by it in its corporate capacity. But every member

of such sovereign body may be legally accountable to it for the acts done by him in his individual and separate capacity. Consequently, in a political community, of which the sovereign government is vested in a body of persons, it is possible that there should be no person who is unaccountable for acts not done by him as a member of such body. On the other hand, a person who possesses the entire sovereign power in a political community (or a monarch properly so called) must be legally unaccountable not only for the acts done by him in his capacity of sovereign or monarch, but also for all his other acts; inasmuch as there is no person to whom he can be legally accountable.

Now in the republican governments, which are called "limited monarchies," the king, although he cannot make a law binding on others, without the concurrence of the rest of the sovereign body, is usually, like a monarch proper, legally unaccountable. Thus in England, the king is, like the Roman emperor, *legibus solutus;* and is not amenable for his acts to any legal tribunal. Whereas, in the republican governments which are not called "limited monarchies," every member of the sovereign body is amenable for acts done by him in a private or domestic capacity. For example, the President of the United States is not less legally responsible for his acts done in a private capacity, than a member of the Senate or the House of Representatives.

Of the constitutional contrivances for affording a security against arbitrary government, none has met with greater favor among political speculators than the providing that the legislative and executive powers of a sovereign government shall be exercised by different persons. When a constitutional arrangement of this sort is supposed to exist there is said to be a SEPARATION of the legislative and executive powers of government; and when it is seen that no such arrangement exists, there is said to be a CONFUSION or MIXTURE of these powers.

The earliest writer, as far as I am aware, who insisted on the importance of placing the legislative and executive powers of government in the hands of different persons, is Locke. His opinion respecting the expediency of separating the legislative and executive powers appears

to have been chiefly founded on the rarity of arbitrary interferences with the execution of the law in the governments of England and Holland, as compared with the frequency of such interferences in the despotic governments of France, Spain and other continental countries. The superiority of the English and Dutch Governments in this respect, Locke seems to have attributed to a supposed separation of the legislative and executive powers; whereas it was in truth owing to the division of the sovereign power among a body of persons. He supposed the comparative badness of the monarchical governments of the continent in his time to arise from the accumulation of the legislative and executive powers in the same hands; whereas it arose mainly from the accumulation of all the sovereign, and especially the legislative, powers, in the hands of one person.

Afterward Montesquieu, in his "Esprit des Lois" (first published in 1748), adopted Locke's views on this subject, and gave them some further development. But his language is so vague, and his reasons are so obscure, that it seems to me impossible to arrive at any certain conclusions as to his meaning, beyond the general doctrine laid down by Locke. Mr. Madison, however, who has examined this question with much ability in some papers of the "Federalist," after observing, correctly, that Montesquieu wrote with a constant reference to the British Constitution, concludes that "Montesquieu's meaning, as his own words import, and still more conclusively as illustrated by the example in his eye, can amount to no more than this: that where the whole power of one department is exercised by the same hands which possess the whole power of another department, the fundamental principles of a free constitution are subverted."*

Le Mercier de la Rivière, the chief expositor of the political system of the French Economists (whose work, entitled "L'Ordre Naturel et Essentiel des Sociétés Politiques," was first published in 1767), sees that the supreme legislature must command the executive powers requisite for enforcing its laws. But he maintains with equal confidence that the separation of the legislative from the

*"Federalist," No. 47.

judicial functions is essential to a good system of government.

In consequence principally of the doctrines thus laid down by Locke and Montesquieu, the expediency of a separation of the legislative and executive functions of government became in the last century a sort of political axiom, which every one supposed himself to understand, and which no one thought of questioning.* From England this maxim traveled to the English colonies in North America, and the framers of the Federal Constitution of the United States, as well as of the constitutions of the several States, endeavored to carry it into effect, and supposed their endeavors to have been successful. The French subsequently borrowed it from the Americans, and an article was inserted in the Declaration of Rights, which was decreed by the Constituent Assembly in 1789, setting forth that "no society in which the guarantee of its rights is not made certain or the separation of the powers determined, possesses a constitution." (Art. 16.)

Paley likewise, in his "Principles of Moral and Political Philosophy," first published in 1785, insists on the importance of the separation of the legislative and judicial functions; which he calls "the first maxim of a free state."

A full examination of the opinions which have been advanced by the writers just mentioned, respecting the separation of the legislative and executive functions of government, is not consistent with my present purpose; but I will state shortly the chief objections to which their doctrine appears to be liable.

1. A complete separation of the legislative and executive powers cannot exist in any constitution. For in every constitution the sovereign person or body must possess the power both of making laws, and of carrying them

*"No political truth is certainly of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty, than that on which the objection is founded. The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny. . . . The oracle who is always consulted and cited on this subject is the celebrated Montesquieu."—"Federalist," No. 47.

into execution. The writers who have recommended the separation of the legislative and executive powers must have known that there cannot be two independent sovereignties in one political community, and consequently that the power of making laws, and the power of executing them, cannot be lodged in persons legally independent of each other. Their maxim respecting the separation of the legislative and executive powers was therefore probably intended only to imply a peculiar mode of delegating the governing powers; namely, that the sovereign government shall delegate to subordinates all its executive powers, but shall either reserve to itself the exercise of all its legislative powers, or, if it delegates any of its legislative powers, it shall intrust them to different persons from those in whom it vests its executive powers.

Even, however, if it be taken in this limited sense, the maxim is not consistent with the practice of any government which has hitherto existed. In most countries the supreme legislature, or its component parts, have performed some executive functions; and all governments have delegated extensive legislative powers to their executive functionaries.

For example, in the Roman republic, all the powers of government were confounded in the hands of the same functionaries. The following account of the power of the consuls in the early period of the republic, is given by Hugo, in his history of the Roman law. «The branches of the supreme power (on the separation of which so much weight was laid at the end of the last century) were all united in the consuls. Of the LEGISLATIVE power they had the important right of presiding in the senate and the assemblies of the populus. The EXECUTIVE power they exercised chiefly in their capacity of commanders in war. And they even had a very important share of the JUDICIAL power, in the decision of private causes, and in the punishment of crimes.» So in England, the crown, although a part of the Parliament or supreme legislature, is also the chief executive authority; the House of Lords, another branch of the Parliament, is the Supreme Court of Appeal, and is also

a court of original jurisdiction in the cases of crimes committed by certain classes of persons; and the House of Commons, the other branch of the Parliament, determines the disputed elections of its own members: to which it may be added, that both houses punish for breaches of their privileges. Perhaps the most remarkable examples of the mixture of the legislative and executive functions are those which occur in the constitutions of the American States' governments, inasmuch as these are known to have been generally drawn with an intention of separating these functions, and sometimes contain an express statement of such intention. Mr. Madison, in discussing this maxim in the "Federalist," remarks as follows: "If we look into the constitutions of the several states, we find that, notwithstanding the emphatical, and in some instances the unqualified terms in which this axiom has been laid down, there is not a single instance in which the several departments of power have been kept absolutely separate and distinct." After showing that the maxim has been violated in the constitutions of New Hampshire, Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North and South Carolina, and Georgia, he adds, that "it is but too obvious that in some instances the fundamental principle under consideration has been violated by too great a mixture, and even an actual consolidation of the different powers; and that in no instance has a competent provision been made for maintaining in practice the separation delineated on paper."—"Federalist," No. 47.

It will be shown below, that in every government the executive functionaries are necessarily intrusted with powers, more or less extensive, of subordinate legislation, and that if they did not possess a power of making subsidiary laws, the main laws of the supreme legislature could not be carried into effect. The most striking instance of the delegation of powers of execution and subordinate legislation to the same functionary occurs in the judicial department; since a court of justice, besides its power of hearing and determining individual cases brought before it, generally possesses also a power of direct legislation for regulating its own pro-

cedure, as well as a power of indirect legislation, by laying down the rules of law on which its decisions are founded.

But even if it were possible for a sovereign person or body to delegate all the executive powers, and to abstain from delegating any legislative functions to subordinate ministers, it does not seem that the proposed separation of powers would be beneficial.

The main advantage which Locke and Montesquieu attribute to a separation of the execution of the laws from the making of them, is that it prevents arbitrary interferences with the ordinary administration of justice. But there is nothing to prevent a sovereign government, which has delegated all or most of its executive powers, from interfering arbitrarily with the acts of its subordinate functionaries. It is true that executive functionaries, being the ministers and servants of the sovereign government, cannot, of their own authority, set aside any law, and that they are legally bound to carry the existing laws into effect. But the sovereign government which gave them power to execute the laws can command them to depart from those laws in any individual case: and every such special command is as binding upon them as a law. On the other hand, there is no reason why the persons who have made a law should not execute it faithfully. It seems, indeed, natural to suppose that the authors of a law would in general be the most disposed to enforce it, and the least disposed to permit departures from it. They may be presumed to be, in general, the best acquainted with its true meaning, and the purposes for which it was enacted.

The suggestion for the separation of the legislative and executive functions is doubtless an attempt to obtain a security against arbitrary government which is impossible; *viz.*, by a legal restraint upon the exercise of the sovereign power; and it is therefore equally chimerical with other similar notions which have been adverted to above. Where a government is unprincipled, and the influence of public opinion is weak, no conceivable distribution of the legislative and executive powers will prevent arbitrary rule. Where a government has learned

to regard the interests of its subjects, and the influence of public opinion is strong, legislative and executive powers may be exercised by the same person or body, without any considerable risk of arbitrary rule.

Before we quit the subject of the arbitrary acts of a government, it should be remarked, that the power of issuing arbitrary commands, though less important than the legislative, is far more important than the executive power. For an executive functionary is appointed to carry a certain law or certain laws into effect, and his discretion is in general confined within tolerably narrow bounds; whereas in arbitrary command or act, though limited to an individual case, is either in derogation of an existing law, or, at least, is independent of any such law. Accordingly, a supreme legislature is in general sparing of its delegations of the power of issuing arbitrary commands; and when such commands are issued by a supreme legislature, they are, in order to mark their importance, usually invested with the forms of a legislative act.

Fourthly. A sovereign government may seek to ascertain certain facts, in order that they may serve as a foundation for some future proceeding of one of the three sorts above mentioned. This may be styled its INQUISITORIAL function.

The important exercise of the inquisitorial function of government, which consists in the examination of witnesses, and the production of documentary evidence before courts of justice, may be considered executive, inasmuch as it subserves the execution of the laws. But investigations for legislative purposes, though they may be made in pursuance of a law, nevertheless are not instituted for the purpose of carrying any law into effect, and, therefore, cannot properly be styled executive. Such are the inquiries carried on in this country by committees of either House of Parliament, (which is called the grand inquest of the realm), and by special commissions appointed by the Crown.

A sovereign government can likewise procure assistance for its deliberations by calling in the advice of counsellors; and, if necessary, paying them for it: but as useful

advice can only be obtained from willing counsellors, governments have never used compulsory powers for this purpose.

Having considered the nature and extent of the powers of a sovereign government, and the different modes in which these powers may be EXERCISED, I proceed to examine the modes in which the same powers may be DELEGATED. The examination of this question is requisite for the purposes of the present inquiry; first, because the nature of executive powers cannot be fully understood until the delegation of powers to political subordinates is explained; and, secondly, because a dependency is immediately subject to a government acting exclusively by delegated powers.

Political powers may be delegated in one of the two following modes:—

First. The person or persons, or some of the persons exercising the sovereign power in any political community, may exercise that power in consequence of being chosen by a body of persons designated in a certain manner. The persons making the choice are generally styled the ELECTORAL or CONSTITUENT body; and the person or persons whom they choose are said to REPRESENT them, or to BE DEPUTED BY them.

Thus, assuming that the Pope legally exercises the entire sovereign power in the States of the Church,* such sovereignty is vested in him in consequence of his election by the College of Cardinals. In the British Empire, the body which legally exercises the sovereign power is composed of the Crown, the House of Lords (consisting of the spiritual peers, and the English, Irish, and Scotch temporal peers), and the House of Commons. To this body the Irish and Scotch peers belong in consequence of election by the general body of the Irish and Scotch peers, and the members of the House of Commons, in consequence of their election by certain classes of persons determined by law. In the United States

* After the battle of Sedan in 1870 the Pope finally lost his temporal power, which had rested on French support. The forces of Victor Emmanuel entered Rome in that year, and the States of the Church were merged in the kingdom of Italy. — *Ed.*

the entire sovereign power may be exercised for any purpose not prohibited by the constitution, in each state, by a body composed of Congress and the peculiar legislature of such state; and the persons who are members of either of these bodies belong to it in virtue of their election by certain classes of the people. A body so constituted possesses in each of the United States the entire sovereignty, with the exception of the power of altering the Constitution. This latter power is vested in an ulterior body, entitled a CONVENTION, which has never yet been called into activity.

The following are the usual marks of this mode of delegation. 1. The trust which this mode of political delegation confers is not a legal trust, guarded by legal duties and sanctions. A representative or deputy exercising, in consequence of an election, the whole or a portion of the sovereign power, is liable to no other restraints from his electors or constituents, in respect to his exercise of such power, than those which arise from the fear of forfeiting their good opinion, or incurring their censure. The electoral or constituent body, and the representative or deputy, do not stand to one another in the legal relation of principal and agent. 2. The electoral or constituent body cannot itself exercise the powers which it enables its representative or deputy to exercise. The College of Cardinals, for instance, cannot, during a vacancy of the Holy See, legally exercise the powers which belong to the Pope; nor can the electors of the Chamber of Deputies in France or Belgium, of the House of Commons in England, of the House of Representatives, or a state legislature in the United States, or of a House of Assembly in an English dependency, legally exercise the powers which belong to each of those bodies. 3. The representative or deputy is commonly appointed by the electoral body for a time certain, and his appointment cannot be revoked by them until the expiration of the time. Thus, in England, a member of the House of Commons, when legally elected, is entitled (unless he becomes personally disqualified) to hold his office until a dissolution of Parliament; and no act of his constituents can legally revoke his appoint-

ment for that period. This arrangement, however, does not necessarily exist; thus, it appears that, in Hungary, the appointment of a member of the Lower House of the Diet is made to last during the pleasure of his constituents, and that they can at any time revoke his appointment, if they should be displeased with his conduct. Moreover, in a government like that of the United States, the representative might be rendered legally responsible to his constituents, by the intervention of the body, similar to the convention of the United States, in which the ultimate sovereignty would reside. But if a body of this sort were frequently called into existence, and exercised an active control over the ordinary legislature, the ordinary legislature would not be virtually sovereign, but would be a merely subordinate legislature.

Secondly: The person or persons exercising the sovereign power in a community may delegate a portion of those powers to political subordinates. Thus, a sovereign government may delegate, with certain reservations, the power of making laws, or of issuing arbitrary commands; and it may delegate an unrestricted power of executing the laws. The trust which this delegation confers is a legal trust, guarded by legal duties and sanctions; and it can be revoked at the pleasure of the sovereign government. Moreover, the sovereign government might itself legally exercise the powers which it thus delegates, if it were convenient, or, indeed, possible for it to exercise them all directly.

From a comparison of the characteristics of the two modes of political delegation just examined, it follows that the latter mode is alone delegation strictly so called, and that the former mode only bears an analogy to proper delegation. It appears to be essential to delegation proper that the delegator should be himself entitled to exercise the powers which he delegates. Now this is not the case in the first mode of delegation above considered. The electors can exercise no portion of the sovereign power which they are said to depute to their representative. Their representative acquires by their election a portion of the sovereign power; but they can scarcely be said to delegate or depute it to him. Accordingly, it

seems to me that such electors may properly be said to have POLITICAL RIGHTS, which would not be the case if the power exercised by them was a portion of the sovereign power; and it may be observed that the political rights of the electors can in general be altered or taken away by the sovereign legislative body, of which their representatives are members. In the following pages, whenever delegation is spoken of, the second mode of delegation, or delegation proper, is meant.

It can scarcely be conceived that any community should exist in which all the functions of government are performed by the sovereign person or body directly; and it is certain that, in all political communities which have actually existed, a large part of the functions of government has been delegated to subordinate ministers or functionaries.

The issue of general commands is the most important part of sovereignty; and it admits of being performed, to a considerable extent, by one person, or by several persons acting as a body. The detailed execution of general commands is of inferior importance; and it requires the services of a large number of persons acting independently, simultaneously and in different places. Consequently, sovereign governments have, in general, exercised directly a large part of their legislative powers; but have invariably delegated nearly the whole of their executive powers. It may be here observed, that the distribution of the sovereign powers amongst a number of persons does not afford any facilities for the direct exercise of those powers, since it is as difficult to do a political act by means of a body as by means of an individual person. For example, it would be as difficult for a sovereign body (such as the Parliament of England) to hear and determine all causes in its corporate capacity, as for a monarch to do the same. Whether the sovereign powers were lodged in a single person or in a body of persons, such person or body could form only one court for judicial purposes; and one court could not, without delegating its functions, hear and determine all the causes arising in a community of any considerable magnitude.

1. The legislative or law-making power may or may not

be delegated by the sovereign person or body; in other words, legislation is supreme or subordinate.

Legislation is supreme when the law is issued by the sovereign person or body. In this case the law is generally issued in a written form.

Legislation is subordinate when the sovereign person or body delegates the legislative power to an inferior authority, which issues or makes the law.

The persons to whom a legislative power is delegated by the sovereign government are called subordinate legislators, and they are said to possess a power of subordinate legislation.

A power of subordinate legislation is sometimes DIRECT; that is to say, the laws made in virtue of it are issued avowedly, and in an imperative form, by the subordinate legislature, and generally in writing.

In the Roman republic, laws were not only made by the sovereign legislative body, assembled in *comitia*, but also by the senate and the plebs, as subordinate legislatures. Moreover, the prætors and ædiles, under both the republic and the empire, possessed and exercised important powers of direct subordinate legislation. The direct legislation of the prætors in particular, as contained in the prætor's edict, was the foundation of the chief part of the private law of Rome. Law made by the prætors and other magistrates, as subordinate legislators, was styled by the Romans *jus honorarium*.

The following are cases in which direct powers of subordinate legislation have been delegated, expressly or tacitly, by the British Parliament:—

1. The power of the king to make orders in council, affecting either the British Isles or a British dependency. If a necessity for new legislation should arise at a time when Parliament is not sitting, or if sudden legislative interference should be urgently required even during the session of Parliament, a law can be made provisionally by the king in council. Thus the bank of England was restricted from making cash payments, during the session of Parliament, by an order in council, issued on the 26th of February, 1797, and the restriction was subsequently confirmed by an Act of Parliament.

Also the power of the king, granted by the mutiny act, to make articles of war for the government of the land forces. The king does not possess a similar power over the navy; but the lord high admiral, or two of the commissioners of the admiralty, may make articles of war for the marines.

2. Legislation by administrative departments, as the lords of the treasury and admiralty, the commander-in-chief, the postmaster-general, the revenue departments, Poor Law commissioners, police commissioners, registrar-general.

3. Power of the judges and of justices of the peace to regulate the procedure of their several courts, and to determine the fees of the officers of such courts.

4. Power of municipal corporations, guilds, universities, colleges, companies, and other corporate bodies, to make by-laws and regulations.

5. Power of justices of the peace to make regulations for the government of gaols and lunatic asylums, and for other local purposes.

Similar powers of subordinate legislation are vested by the governments of France, and of the several German and Italian States,* in all the chief administrative departments. The powers of subordinate legislation vested by these governments in the department of police are, in particular, very extensive. In France, the king† has the power of making ordinances for carrying into effect the general provisions of a law made by the king and chambers on the subject of quarantine; the local quarantine authorities have a further power of making regulations subordinate both to the law of the king and chambers, and to the king's ordinances.

It sometimes happens that a number of rights and duties are created by a sovereign government, which are only to take effect upon a declaration made by a subordinate legislature. Thus the English Parliament has defined the rights and duties of its subjects in case of war; but it has vested in the Crown the power of

*Written, it will be remembered, before the confederation of Germany and the union of Italy.— Ed.

†Louis Philippe who lost his throne in 1848.—Ed.

declaring the country to be in a state of war, and, consequently, of calling these rights and duties into activity. In like manner, the king is empowered by Act of Parliament to declare, by order in council, the places which render ships touching at them liable to quarantine, and also the places where ships are to perform quarantine. By another Act of Parliament, the king in council is empowered to direct at what places in a county assizes may be held, and to divide counties for the purpose of holding assizes in different divisions of the same county. Another statute empowers the lords commissioners of the treasury to appoint the ports which shall be warehousing ports; and also empowers the commissioners of customs, subject to the directions of the lords commissioners of the treasury, to appoint in what warehouses any, and what sorts of, goods may be warehoused. So the Poor Law commissioners were empowered to declare the day on which the Parochial Assessments Act was to come into operation. This power is called by Mr. Bentham the «power of specification»; and the power of determining the persons who are to fill the executive offices may also be referred to it. The creation of the offices themselves is delegation by the sovereign government of its executive power.

A power of subordinate legislation is sometimes INDIRECT; that is to say, the laws made in virtue of it are not issued avowedly and in an imperative form by the subordinate legislature, but are implied in the usages which it sanctions, or the judicial decisions which it utters. All customary or consuetudinary law, and all law founded upon judicial precedents, or text writers of authority, and upon the practice of public departments, or legally constituted bodies, belongs to this head.

It would be an interesting problem to investigate the comparative quantity and character of the laws made directly by the supreme legislature of a country, and of the laws made directly and the law made indirectly by the subordinate legislatures. The subject is too extensive for a full examination in this place, but a few remarks on it may be here introduced.

Hugo, in his "History of the Roman Law," after having stated that the laws made by the supreme legislature at Rome between the time of the twelve tables and the year 650 U. C. were very numerous, and chiefly concerned the *jus publicum*, or Constitutional Law, proceeds to remark, that supreme legislation has rarely concerned itself much with *jus privatum*, or the law of property and domestic relations. A similar remark is applicable to the law of England. The legislation of the English Parliament has been chiefly concerned about subjects which seem properly to fall under the idea of *jus publicum*, such as the determination of the suffrage for the election of members of the House of Commons, and regulations for the conduct of their election; the imposition and collection of taxes; the regulation of offices, salaries, and pensions; the management of the army and navy; the Criminal Law and its execution; the powers of the different courts of justices of the peace, and of peace officers and policemen; the powers of municipal corporations and the like. On the other hand, there are only a few important statutes concerning the law of property or other branches of *jus privatum*, such, for example, as the statutes of wills, of uses, of frauds, and of limitation of actions. The quantity of the laws made in England directly by subordinate legislatures is considerable; as orders of the king in council, the articles of war, general orders for the army, regulations of revenue departments, rules of practice made by the superior courts, by-laws of corporations; not to mention laws made by subordinate governments in the dependencies: the character of these laws depends in general on the special delegation in virtue of which they are made. The law made indirectly by subordinate legislatures in England is of immense bulk and importance; for it comprehends nearly the whole of the *jus privatum*, inasmuch as nearly the whole of the *jus privatum* is due to the indirect legislation of the courts of law and equity, together with the ecclesiastical courts.

It will be found in general that nearly the whole of the *jus privatum* of every country has been formed by the indirect legislation of the courts, aided by the labors of

juristical writers; and that it has only been issued directly by the supreme legislature, after it has been digested, from the existing materials, into the form of a code; as was the case with the Roman and French codes.

All laws made by virtue of a power of subordinate legislation, whether made directly or indirectly, emanate ultimately from the sovereign government; inasmuch as the sovereign government confers the power of making them, and applies the sanctions by which they are enforced.

A power of subordinate legislation sometimes extends only to a certain subject or certain subjects, and the laws made in virtue of it are binding only on the persons belonging to a certain body, and not on the public generally. Such, for example, is the power of making by-laws which is possessed by the college of physicians, or the college of surgeons, in this country. Sometimes it applies to the public generally, but extends only to a single subject, or a limited number of subjects; thus a power of subordinate legislation may be given for the purpose of carrying into effect the provisions of a certain law made by the supreme legislature (such as a law respecting quarantine), or for some specific purpose, such as making regulations respecting police, watching and lighting, or sewerage. Sometimes a power of subordinate legislation is included in a general delegation of political powers over a certain territory. A power of subordinate legislation, of this nature, extends over an unlimited number of subjects, and may be exercised over all the persons inhabiting such territory. A territory so circumstanced is styled a DEPENDENCY, and the persons to whom general political powers (including a general power of legislation) over such territory are thus delegated, form its SUBORDINATE GOVERNMENT. The detailed examination of the nature of a subordinate government is reserved for the following essay.

The main characteristics of a subordinate or delegated legislative power are:—

1. THAT IT MAY BE RESUMED AT THE PLEASURE OF THE SUPREME LEGISLATURE WHICH GRANTED IT. If a legislature called subordinate could retain any power in defiance of the legislature called supreme, it would cease to be a subordinate legislature, and would, in fact, share

the sovereign power with the so-called supreme legislature.

2. That the laws made in virtue of it must not be inconsistent with any law or rule of law made or sanctioned by the supreme legislature in relation to the same subject-matter. If a legislature called subordinate could, of its own authority, repeal or modify the laws or rules of law made or sanctioned by the supreme legislature, it would be co-ordinate with, not subordinate to, such legislature. It is to be observed, that the laws of a subordinate legislature must conform, not only with the laws made directly, but also with those made indirectly, by the supreme legislature. Consequently, they must conform with a law made by a subordinate legislature in the dominant country, if such law should affect the dependency. For example, the subordinate government of an English dependency is bound by a rule of law established by an English court, so far as such rule of law extends to the dependency.

3. That its legislative acts are liable to be annulled in consequence of the decision of a competent tribunal. This attribute of subordinate legislation is a result of the necessity that its acts should not be inconsistent with a law of the supreme legislature: for if any act of a subordinate legislature is inconsistent with a law of the supreme legislature, it is illegal; and if it be illegal, there can scarcely fail to be a tribunal which is competent to declare its illegality.

It sometimes happens, that in consequence of invasion by a foreign enemy, or of internal dissensions, the affairs of a popular government reach a crisis demanding the rapidity and decision of execution, which can only be obtained from a single will. In such a crisis as this, the entire governing powers may be delegated by the ordinary sovereign government to an extraordinary officer, subject only to the limitation that the delegation can at any moment be recalled. Instances of this species of delegation in republics are afforded by the Greek Æsymnetes and the Roman Dictator. A similar delegation may, likewise, take place in a monarchy, with respect to a part of the monarch's dominions, if the monarch should be

unable to be present on the spot, or should not possess the energy and efficiency requisite for the occasion. The officer styled *alter ego* in the Neapolitan government, and perhaps known in some other of the modern governments of southern Europe, affords an example of the latter mode of delegation. Under such ample delegations as these, the officer possesses a power of subordinate legislation, discharged of the two last of the three conditions which have been just enumerated.

2. Since the power of issuing arbitrary commands is sparingly exercised by the supreme governments of civilized States, so it is not extensively delegated by them to political subordinates. Thus in England the power of dispensing with the laws is only conceded to the Crown and its officers, in certain cases, as for pardoning or mitigating the punishment of convicts, for remitting custom and excise duties, for excusing poor's rates. Generally, however, the power of dispensing with the laws in individual cases is in England exercised only by the supreme legislature, as in the cases of divorce bills and private estate bills.

3. The next species of the delegation of the powers of government which we have to consider, is the delegation of EXECUTIVE powers to political subordinates.

These subordinates are called generally, executive, or, according to their special department, judicial or administrative functionaries. The persons at the head of the administrative offices are usually called ministers of state.

It would be tedious to give a formal enumeration of the several classes of the executive officers commonly employed by a sovereign government; but the following list will serve to exemplify the principal varieties of them:—

Collectors of public taxes, and of rents of government lands.

Paymasters.

Accountants.

Comptrollers and auditors.

Military and naval commanders.

Commissaries and guardians of naval and military stores.

Judges.

Policemen.

Persons charged with sanitary and quarantine regulations.

Ambassadors and consuls.

Ministers of religion.

Professors and schoolmasters.

Officers charged with the relief of the destitute.

Notaries public.

Registrars of births, deaths, and marriages.

The general nature of the executive powers delegated to these functionaries has been explained above; and it has also been shown that, unless the executive powers were delegated to a large number of subordinate officers, the laws of a sovereign government could not be carried into effect.

With respect to the comparative importance of the legislative and executive powers, it may be observed that a sovereign government possesses both; and that, inasmuch as each of these powers implies the other, neither can exist alone. But the power of making laws, or issuing general commands, is the more important of the two, as being the more extensive in its operation; and, accordingly, the legislative power is in general only partially delegated by a sovereign government; whereas (as has been already remarked) a government in general delegates nearly the whole of its executive powers. The executive officers, inasmuch as they act by delegated powers, are subordinate to the sovereign government, and are merely its ministers, for the purpose of carrying its laws into effect. Hence it is in general an error to represent the legislative and executive departments as having co-ordinate and equal powers; since a sovereign government in general exercises its legislative functions, to a great extent, directly; whereas its executive functions are in general delegated to subordinates. Moreover, the power of making laws implies the power of determining the delegation of executive functions to subordinate officers, since it is by means of laws that the delegation is made.

Nevertheless, as a general command would be nugatory, if means were not taken for enforcing it, and as it is the duty of the executive to enforce the general commands of the legislature, the executive often attracts the larger share of public attention, and the functions of government are supposed to reside more peculiarly in it.

Moreover, an extensive power of subordinate legislation is always delegated to executive functionaries; such powers of subordinate legislation being always (except in the case of judges) limited to a certain subject or subjects, or to the purpose of carrying a certain law or laws into effect.

Instances of the delegation of powers of subordinate legislation to administrative functionaries, as to the Roman *ædile*, the Board of Treasury, and the revenue departments in England, the police department in France and other continental states, have been already given; and, indeed, perhaps every administrative officer has a power of subordinate legislation to a greater or less extent.

The most extensive exercise of the powers of subordinate legislation by executive functionaries is that made by the judicial department, whose indirect legislative powers are (it is to be observed) unlimited as to subjects. Some remarks have been already made on the extent of the law which owes its origin to judicial legislation, as compared with the extent of that which is formed by the supreme legislature.

The following may be conceived to be the principal reasons which induce a sovereign government to delegate extensive powers of subordinate legislation to its executive officers.

If executive officers had no legislative power, and if they could issue no other command than a special command founded upon a law previously made or sanctioned by the supreme legislature, the laws of the supreme legislature could scarcely be executed. So great is, in general, the difficulty of foreseeing numerous remote contingencies, and of exhausting them by legal provisions, that the most carefully considered and most skillfully

executed work of legislation would scarcely stand the test of practice, unless it could be helped out with some subsidiary regulations made by the persons employed to enforce it. Moreover, it sometimes happens that a want of appropriate knowledge in the supreme legislature, and the scantiness of its time on account of the variety of the subjects which come before it, and successively claim a share of its attention, compel it to be comparatively vague and meager in the composition of its laws, and to trust to its executive officers to supply the detailed regulations necessary for carrying its general directions into complete effect. It may be added that changes of circumstances (such as the introduction of new customs or new inventions) would render many laws inoperative, if the executive officers did not possess a power of making such regulations as would adapt them to an altered state of things.

After a supreme legislature has laid down general rules of extensive application, subordinate legislatures, consisting of executive officers, can develop their provisions, and give them the requisite minuteness and completeness; having for that purpose a more flexible and manageable power than the supreme legislature and being able to act with a less elaborate machinery.

The universal practice of delegating powers of subordinate legislation to executive functionaries, shows that the legislative and executive departments of the government can be distinguished only by the powers exercised, and not by the persons exercising them.

4. Lastly, it remains for me to notice the delegation of the INQUISITORIAL powers of a sovereign government.

Powers of inquiry for judicial and administrative purposes are delegated extensively to judicial and administrative functionaries.

A power of inquiry for legislative purposes is not in general delegated, except to a subordinate government. But the boundaries between legislative and executive inquiries are not always distinctly marked, since an inquiry for an administrative purpose may suggest improvements in the existing laws.

Respecting the means by which the powers of government are delegated, it may be observed, that they are delegated either expressly, by an oral or written declaration of the sovereign government; or impliedly, by a tacit signification of its pleasure; as, for example, by constitutional usage.

# AN ESSAY ON THE GOVERNMENT OF DEPENDENCIES.

## CHAPTER I.

### Definition of a Dependency and of a Subordinate Government.

In the preceding Inquiry, I have attempted to explain the nature of supreme and subordinate powers of government, and the mode in which the latter are delegated. I have also shown in it that by a general delegation of political powers a dependency with a subordinate government is created. The detailed examination of the nature of a dependency and its subordinate government was reserved for the present Essay.

A dependency is a part of an independent political community which is immediately subject to a subordinate government.

That part of the independent political community which is composed of the supreme government, and of the persons immediately subject to such supreme government, may, with reference to the dependency, be styled the DOMINANT COMMUNITY, or COUNTRY. The supreme government is common to the dominant country and the dependency; but since the persons composing it are in general natives of the dominant country, and since it is the government to which the people of the dominant country are directly subject, the members of it may be properly considered as belonging to the dominant community.

A subordinate government* is a government which acts by delegated powers, but which possesses powers applic-

*By a subordinate government, I mean (as I have stated in the text) a government not being sovereign, but having the complete

able to every purpose of government, which is complete in all its parts, and would be capable of governing the district subject to it, if the interference of the supreme government with its proceedings were altogether withdrawn.

A subordinate government resembles a sovereign government in this: that it is completely organized, and possesses all the institutions requisite for the performance of the several functions which are proper to a government. It differs from a sovereign government in this: that it is subordinate to, or, in other words, in the habit of obeying, the government of another political society.

A subordinate government resembles a body of functionaries exercising certain powers of government over a district which is immediately subject to a sovereign government (such as a county, department, municipality, or borough), in being subordinate to a sovereign government. It differs from such a body of functionaries, in possessing the full complement of the powers and institutions requisite for governing a political community. For example, the town council of an English borough, with the other borough officers, though they exercise many of the functions of government in the borough, do not exercise them all; and it would be necessary for the borough, if the interference of the supreme government were withdrawn from it, to create new public departments, before it would possess a completely organized government, capable of presiding over an independent political society.

Several dependencies may be subject to the same supreme government; or, in other words, may be dependent on the same dominant community.

The district subject to a subordinate government is

organization which characterizes the sovereign government of an independent political society; in other words, possessing all the political powers which a government can possess, and all the institutions requisite for the exercise of them. A body of public functionaries may preside for certain purposes over a district (as a county, department, municipality, or borough) which is immediately subject to a sovereign government; but inasmuch as the powers of such a body only extend over certain classes of subjects, it cannot be said, with propriety, to form the subordinate government of the district.

necessarily less extensive than the entire territory subject to the supreme government.

The entire territory subject to a supreme government possessing several dependencies (that is to say, a territory formed of a dominant country together with its dependencies), is sometimes styled an EMPIRE; as when we speak of the British Empire. Agreeably with this acceptation of the word empire, the supreme government of a nation, considered with reference to its dependencies, is called the IMPERIAL GOVERNMENT, and the English Parliament is called the IMPERIAL PARLIAMENT, as distinguished from the provincial parliament of a dependency.

Since a dependency is characterized by its being immediately subject to a subordinate government, and since a subordinate government is characterized by the completeness of its delegated powers, and their applicability to every purpose of government, we proceed to consider in detail the nature and extent of the powers which are delegated to a subordinate government.

The most important power delegated to a subordinate government is a general power of subordinate legislation, as distinguished from a special power of subordinate legislation.

The difference between a general and a special power of subordinate legislation may be described in the following manner:—

A GENERAL power of subordinate legislation is necessarily limited by the conditions to which all delegated or subordinate political power is liable; but it is unlimited as to the subjects to which it may be applied within the assigned territory. Accordingly, where a general power of subordinate legislation has been delegated, the subordinate legislature can make a law upon any subject, provided that the law which it makes be not inconsistent with a law established by the supreme legislature in relation to the same subject, and provided that the subordinate legislature be not prohibited by a law of the supreme legislature from legislating on such subject. For example, when a Roman governor was sent into a province, he could make any law in the province which was not inconsistent with the rules established by Rome

for the government of the province upon its first reduction, or with some law, binding the province, subsequently made by the supreme legislature. Again, the subordinate government of an English dependency (consisting of the Crown and a body of persons in the dependency) is competent to make any law which is not inconsistent with some act of Parliament, or some recognized rule of common (or unwritten) law, binding the dependency.

But where a SPECIAL power of subordinate legislation has been delegated, the subordinate legislature can only make a law concerning the subject or subjects upon which it is, either expressly, or by necessary implication, empowered to legislate. For example, if Commissioners of Revenue are invested with a power of regulating the mode in which a tax is to be levied; if a municipal body is invested with powers of regulating the paving, lighting, and watching a town; if a judge is empowered to establish rules of procedure for his own court, these functionaries acquire no power of legislation which is not expressly or implicitly conferred upon them by the terms of the delegation. A subordinate government possesses a power of legislating on every subject which is not, tacitly or expressly, excepted from its powers. A special subordinate legislator possesses no legislative power which has not been expressly, or by clear implication, conferred upon him. Consequently, in the latter case the presumption of law is against, in the former case it is in favor of, the existence of any given legislative power.

Hence the legislative power of a subordinate government is subject only to one legal limitation: *viz.*, that its laws must not be inconsistent with any law of the supreme government binding the dependency. The legislative power of a subordinate legislator, having a special power of subordinate legislation, is subject to two legal limitations: *viz.*, 1. Its laws must not be inconsistent with a law of the supreme government. 2. It must only legislate on the subject or subjects on which it has been expressly, or by necessary implication, empowered to legislate.

A subordinate government may be restrained by the supreme government from legislating on a given subject. But in this case the restriction would be made by specifically excepting the subject from the unlimited number of subjects to which the power of legislation possessed by the subordinate government is otherwise applicable. The same remark likewise extends to restraints placed on any other of the powers of a subordinate government, such as its executive powers.

The supreme government may, however, delegate a general power of subordinate legislation to a functionary or body of functionaries, without creating a subordinate government by the delegation. In other words, a government may confer a power of subordinate legislation, which may be exercised over an unlimited number of subjects, without conferring at the same time general political powers, or powers which can be applied to every purpose of government. For example, in every civilized country the judges exercise INDIRECTLY a general power of subordinate legislation, with the approbation of the supreme legislature; in other words, they legislate indirectly on an indefinite or unlimited number of subjects. Moreover, judges may exercise DIRECTLY a general power of subordinate legislation; thus the Roman prætor legislated directly, in his judicial capacity, by his edict. But a court having a power of legislating directly, after the manner of the prætorian edict, would be far from possessing all the powers of a subordinate government. For in the first place, a court thus constituted would want the administrative powers which a subordinate government possesses: such as the power of disposing of the armed force, or the general power of levying taxes. Moreover, since all its legislative powers would be the consequence of its judicial powers, its powers of subordinate legislation could scarcely have, in practice, as extensive a range as the powers of subordinate legislation possessed by a subordinate government; thus, it could scarcely make laws for the government of the army and navy.

It follows from the preceding remarks, that the powers of legislation delegated to a subordinate government

enable it to make any law which is not inconsistent with a law of the supreme government binding the dependency. It is often difficult in practice to determine which are the laws of a supreme government that bind a dependency. Some observations with reference to the English practice on this point will be made lower down.

It likewise follows that a legislative act affecting a dependency may proceed immediately either from the supreme government or from the subordinate government; or that the subordinate government may issue the act, but in obedience to instructions from the supreme government.

Moreover, a supreme government may make a law affecting a dependency, defeasible or suspendible at the pleasure of the subordinate government of the dependency; or it may annex to the law any condition to be fulfilled by the subordinate government.

In addition to the power of making laws, a general delegation of political powers confers on the subordinate government a power of issuing an ARBITRARY command (that is, a special command not founded on a pre-existing law), provided that such arbitrary command be not inconsistent with some law of the supreme government binding the dependency.

It has been remarked in the Preliminary Inquiry, that an arbitrary command, though it be not (like an executive command or act) founded upon an existing law, and though it be not itself a law, yet is often invested with the legislative forms; and this remark applies equally to arbitrary commands or *privilegia* issued by supreme, and to those issued by subordinate governments.

Moreover, besides the powers of making laws and of issuing arbitrary commands, a general delegation of political powers confers on a subordinate government a power of carrying into effect, by executive commands or acts, all the laws in force in its territory. It has been explained above, that the legislative power implies the power of determining the matter in which the executive power shall be delegated; and thus a general power of subordinate legislation naturally involves a power of

creating an executive machinery for the use of the dependency, and of remodeling it at pleasure.

It has been shown above that a supreme government always delegates its executive powers to certain subordinate functionaries; and that it also delegates to these functionaries some special powers of subordinate legislation, more or less extensive or important. In this respect there is no difference between a supreme and a subordinate government. The delegation of powers to executive officers is precisely similar in both cases.

A general delegation of political powers, likewise, confers on a subordinate government INQUISITORIAL powers, not only for executive, but also for legislative purposes.

From the preceding enumeration of the powers belonging to a subordinate government, it results that a subordinate government possesses all the four sorts of powers which belong to a supreme government, and consequently that it possesses powers applicable to every purpose to which the powers of a government can be applied.

The delegation of a general power of subordinate legislation to the government of a dependency is more important than the delegation of a special power of subordinate legislation to a municipal or other executive body, not only on account of the greater number of subjects to which the general power is applicable, but also on account of the greater frequency of the occasions for its exercise.

A subordinate government cannot, as has been already remarked, make a law inconsistent with a law of the supreme legislature affecting the dependency; still less can it repeal or alter any such law. Accordingly, if the supreme government had legislated extensively for the dependency, there would be little scope for the exercise of the powers of subordinate legislation possessed by its own peculiar government, however extensive those powers might be. But, in general, on account of the difference between the circumstances of the two countries, or the remoteness of the dependency, or its recent acquisition by the dominant country, or some other cause, the supreme government has scarcely legislated at all for its internal regulation. There-

fore a wide field for the exercise of its legislative powers is in general open to the subordinate government. For example, few acts of parliament relate to the internal government of any English dependency, excepting so far as they determine the structure or powers of its subordinate government; as the late Act renewing the charter of the East India Company,* and the acts relating to the Constitution of Canada. The acts of parliament applicable to the English dependencies chiefly regulate their commercial or other relations with England, or with one another, or with foreign countries; as the Navigation Act, and the acts relating to the transportation of convicts, and the slave trade.

From the generality of the powers of a subordinate government, and the completeness of its administrative and judicial machinery, it likewise follows that a dependency is as little incorporated with the dominant community, and its government is as distinct, as is consistent with its being an integral part of the same independent political society.

Accordingly, a dependency is not understood to be included in a commercial treaty with the dominant country, if the dominant country is alone named. A treaty of peace or declaration of war is, however, understood to include dependencies without their being named; and a dominant country is as responsible to other independent states for the conduct of the inhabitants of its dependencies as of any other part of its dominions.

It may be here remarked, with reference to the separateness of a dependency, that a circumstance very characteristic of a dependency is, that the revenue and expenditure of its subordinate government constitute a separate account; and that no part of its public revenue and expenditure is mixed with the public accounts of the dominant country. A district immediately subject to the supreme government (such as a county department, borough, or parish) may keep a separate account

* The charter of the East India Company was renewed with modifications in 1833, and again in 1853. In 1858, after the Indian Mutiny, it was abolished, and the government of India was taken over by the Crown. —Ed.

of certain public taxes collected and disbursed by it; but other taxes are collected in the district by the agents of the supreme government, the proceeds of which it expends and accounts for. It makes no difference as to the separateness of the public accounts of a subordinate government, whether the dependency does or does not pay a tribute to the supreme government.

The delegation of political powers to the governments of dependencies is so extensive, that there is no political power which has not been exercised by some subordinate government. In general, however, the power of making war of their own authority is withheld from the subordinate governments of the dependencies of civilized states; but it has often been exercised by the oriental satraps and pachas, and a power of self-defense against invasion must necessarily be allowed to the governments of all distant dependencies, such as the American, Indian, and Australian dependencies, of England.

The payment of a TRIBUTE * by one political community to another is a mark that the tributary community is dependent on the other; provided that, in case the tribute is withheld, the payment of it can be exacted by the community which expects to receive it. But the payment of a tribute is not universally a mark of dependence; for the payment may be made voluntarily, and not under the fear of its exaction by force. For example, when the kings of England paid the proceeds of the Peter's pence to the Pope, this payment did not render England a dependency of the State of the Church. In like manner, one community may buy off the hostility of another, by the payment of a tribute, and yet retain its political independence. Thus when Sweden, Denmark and Portugal made regular payments to Algiers, in order to insure their ships against the piracy of the Algerines, these countries did not become dependencies of the Algerine government. A payment of the latter sort may be compared to the BLACKMAIL paid by the landowners in the Scotch lowlands to the highland marauders, as the price

* By a TRIBUTE I understand a payment made periodically by one government to another government, not as a compensation for a wrong or in discharge of a debt.

of the security of their cattle; which payment had not the effect of being an acknowledgement to those who received the money that they had any right in the soil.

Having examined the nature of the delegation of political powers to a subordinate government, I proceed to consider the manner in which the persons composing such a government may be distributed.

A subordinate government never consists exclusively of persons resident in the dominant country; since the purpose for which a subordinate government is created, is to enable the dependency to be governed by persons resident on the spot. If the dependency could be governed by the supreme government directly, or by subordinate government consisting of persons resident in the dominant country, there would be no need of creating the subordinate government, or of governing the country as a dependency. Every government must have a power of communicating rapidly with its subjects; and, consequently, a territory which lies at a considerable distance from the seat of the supreme government must be placed under a subordinate government, and be governed as a dependency. It will be shown lower down that the idea of DISTANCE, with reference to the government of a territory, is relative, and depends on the political skill, and the facilities of communication with the territory in question, which the supreme government possesses.

A subordinate government may, therefore, either consist exclusively of persons resident in the dependency, or it may consist partly of persons resident in the dominant country and partly of persons resident in the dependency

The former is the more simple system, and it was followed in the dependencies of the ancient republics, as in the subject states of Athens and in the Roman provinces. It has also been adopted in the inartificial monarchies of Asia, both in ancient and modern times.

The more complex system of dividing the subordinate government into two portions, one of which is in the dominant country, the other in the dependency, has been adopted for the government of the dependencies of modern European states, as Spain, France, Holland, and England.

According to the modern English phraseology, that portion of the subordinate government which consists of persons resident in the dominant country is usually called the HOME GOVERNMENT; and that portion of it which consists of persons resident in the dependency is usually called the LOCAL GOVERNMENT.

Where the subordinate government is thus divided, it is sometimes a complex whole, in which the consent of both portions is requisite to the making of a law. Sometimes the portion in the dependency is completely subordinate to the portion in the dominant country, and the latter may legislate without the consent of the former. In this case, a sub-delegation may be considered as taking place, as in an English crown colony: and the viceroys of the Spanish colonies seem to have formerly occupied a similar position with respect to the council of the Indies. Sometimes the portion in the dependency can legislate without the consent of the portion in the dominant country, as appears to have formerly been the case with the English colonies in America.

It may be observed, that the members of the subordinate government, resident in the dominant country, are usually in close connection with the supreme government, and are often members of it; and that since, in general, the supreme government legislates rarely concerning the internal affairs of a dependency, the members of the subordinate government, who are resident in the dominant country, form the chief link between the dominant country and the dependency.

When the powers of the subordinate government are divided between persons resident in the dominant country, and persons resident in the dependency, the share in the power of subordinate legislation, which is exercised by persons resident in the dependency, may either be conferred exclusively on a person or persons appointed by the home government, or it may be conferred on the nominees of the home government, conjointly with a body of persons chosen by the inhabitants of the dependency.

On the nature and extent of the powers of a body

so elected in a dependency, possessing a share of the power of subordinate legislation, and on the relation of such a body to the supreme government, some further remarks will be made in a subsequent part of this Essay.

The portion of a subordinate government which consists of persons resident in the dependency, may be principally composed either of natives of the dominant country or of natives of the dependency itself. We shall hereafter point out that the difference between the two latter modes of government is of great importance, although the form of the government is the same. It may be added, that the headship of the subordinate government in the dependency is almost invariably intrusted to a native of the dominant country.

The dependencies of a monarchy have always been governed by a single governor, who has united in himself all the powers delegated to the subordinate government. This has been the case with the satraps, pashas, and other governors under the Oriental monarchies, and with the Spanish viceroys of the Indies.

A dependency of a State having a popular government has sometimes been governed by a single person, and sometimes by a body composed of several persons. Thus in the Athenian dependencies the subordinate government was conducted by a democratic body; the subordinate government of the Roman *municipia* was conducted by a body of councilors, whilst the Roman provinces were generally subject to a single governor; the Venetian dependencies were placed under a government having an organization similar to that of the dominant republic; in the British dependencies the legislative power of the governor is almost always checked by a body of persons who are either appointed by the Crown or elected by the inhabitants of the dependency.

There are some other questions connected with the government of a dependency, which may be conveniently examined in this place.

It may be asked, whether there can be a dependency of a dependency? and whether a subordinate government can create a subordinate government?

There is nothing in a power of this sort repugnant to the idea of a dependency. Provided such a delegation be not prohibited by the laws of the supreme government, a subordinate government may make a general delegation of its powers with respect to a portion of the territory subject to it. But it is generally considered out of the province of a subordinate government to create another subordinate government; and there is a manifest inconvenience in the existence of a double row of dependencies, since a law would have to pass through two local governments before it came under the revision of the home government.

Some of the English dependencies are said to have dependencies of their own, as Jamaica and Malta. These are small islands near to Jamaica and Malta, which are comprehended in the same subordinate government. They would, perhaps, be more correctly styled "appendages" or "appurtenances" than "dependencies."

It may further be asked whether one political community is dependent on another, when the head of the government of the one community is also head of the government of the other.

If the head of one political community becomes the head of another such community, and he possesses the entire sovereignty (or is monarch) in both communities, the two communities become integral parts of the same empire; and either they may both be governed directly by the monarch, or one of them may be placed by him under a subordinate government, and be governed as a dependency. Thus, the Netherlands, the kingdom of the two Sicilies, and the duchy of Milan, were integral parts of the Spanish Empire in the sixteenth century; and were governed as dependencies of Spain. If the distance would have permitted, these territories might have been governed directly by the supreme government, in the same manner that the several independent kingdoms of the Spanish peninsula became directly subject to one monarch.

If the head of the government in the two communities does not possess the entire sovereignty (or is not monarch) in both, each community remains independent of

the other. In order that two communities should be united under one sovereign government, it is necessary that the same government should be sovereign over both; which is not the case if the only political connection subsisting between them is, that a person who is a member of the sovereign body in one community is also a member of the sovereign body in the other; or, that a person who is a member of the sovereign body in one community possesses the entire sovereignty (or is monarch) in the other. Thus, the late king of England was a member of the sovereign body in the British Empire, and was likewise a member of the sovereign body in the kingdom of Hanover. But Great Britain and Hanover were not on this account constituent parts of the same political community; nor was either country a dependency of the other. So after the union of the crowns of England and Scotland, Scotland was still an independent community, inasmuch as the king and the English parliament could not legislate in it; and it was not till the union of 1707 that England and Scotland became one political community, and subject to a common government. By this union, Scotland was rendered immediately subject to the supreme government of Great Britain; and therefore Scotland never was an English dependency. The English Parliament however, exercised a power of legislation over Ireland until 1782; so that, before that time, Ireland was an English dependency, and its houses of Parliament formed, together with the English crown, a subordinate government. But in 1782, the British Parliament surrendered its legislative power over Ireland. In consequence of this surrender of power Ireland became an independent kingdom, whose king was also king of Great Britain; and the Irish houses of Parliament, instead of forming part of a subordinate government, became a part of a sovereign government. The independence of Ireland lasted until 1800; and the union of 1800 produced the same change in the political relations of Great Britain and Ireland, as the union of 1707 had produced in the political relations of England and Scotland.

The subsisting relation between the governments of Hungary and Austria is similar to that which subsisted

between the governments of England and Scotland in the seventeenth century, and to that which lately subsisted between the governments of Great Britain and Hanover; excepting that the Emperor of Austria possesses the entire sovereignty in the Austrian dominions, and is only a member of the sovereign body in Hungary. The princes of the house of Austria have attempted to exercise the entire sovereign power within the territory of Hungary, and to treat Hungary as an Austrian dependency; but this pretension has been resisted by the Hungarian Diet, and Hungary must now be considered as an independent kingdom, whose king is also Emperor of Austria.

Some writers have maintained that the English colonies in America and the West Indies are connected with England by a political relation similar to that just described. They have asserted that the English Parliament is not supreme in any of these colonies; and that a law can only be made therein by a body composed of the English king and the local legislature of the colony. According to this view, the colonial local legislature is not subordinate to, but co-ordinate with, the English houses of Parliament; and the local legislature occupies in the colony the same position with respect to the crown, which the houses of Parliament occupy with respect to it in England. It follows, of course, from this view, that the English colonies in which this system of government obtains are not dependencies of England.

There is likewise a question respecting the seat of the sovereign power, in one species of dependencies, which may be here examined.

It sometimes happens that an independent state establishes, on the territory of another independent state, a factory, or other settlement for purposes of trade or industry; and prevails upon the supreme government of the state to allow to the inhabitants of such factory or settlement, certain exemptions from the laws of the place, and the jurisdiction of the native courts. Having secured these exemptions for the precinct assigned to such settlement, the supreme government of the other state proceeds to organize for it a subordinate government, and even to

exercise over it a control resembling that which such supreme government might exercise over one of its own proper dependencies.

Instances of this sort of settlement are afforded by the factories of the Venetians and Genoese in Constantinople under the Greek, and subsequently under the Ottoman Empire; by the factories of the Portuguese, Dutch, French, and English in Hindostan; and by the factories of the Portuguese and English at Macao and Canton. The British settlement of Honduras seems to have been originally established on Spanish soil by the consent of the Spanish Government; at present, however, it is absolutely dependent upon England.

Now, in each of the cases just stated, a subordinate government can be plainly discerned, which, though it may not possess a very complete organization, nevertheless suffices for the wants of the small community over which it presides. But it is less easy to determine what is the supreme government to which each of these local governments is subordinate; in other words, what is the supreme government upon which the dependency is dependent.

Strictly speaking, the subordinate government of such a settlement is subject to the supreme government of the country in which the settlement is situate. The supreme government of the country never surrenders its sovereignty over the territory occupied by the settlement; and it can, at any time, resume the powers which it allows to be exercised by the other government. But, so long as the treaty or other agreement between the two supreme governments is observed by the supreme government of the country, the subordinate government of the settlement is in practice influenced by the directions issued to it from the supreme government of the country which has established it. Thus, so long as the Chinese Government permitted the existence of an English factory at Canton, the English of the factory claimed and enjoyed certain exemptions from the jurisdiction of the Chinese Courts, and the English Parliament even made laws by which it affected to bind the inhabitants of the factory. But, nevertheless, the sovereignty of the Chinese Gov-

ernment over the English factory at Canton never could have been disputed by the English Government; and the power which the English Parliament exercised over it could only have been considered as exercised with the consent, and by the sufferance of, the supreme Chinese Government.

## CHAPTER II.

### Examples of Dependencies.

Having given in the preceding chapter a general definition of a dependency, I propose, before I proceed to a further illustration of the ideas involved in this word, to collect some examples of dependencies, for the purpose of exhibiting the principal forms under which the relation of a dominant and a dependent community has existed in different ages and countries.

#### § 1. Dependencies of the Oriental Monarchies, and the Ancient Republics.

The system of governing by means of dependencies existed to a great extent in the ancient world; indeed, it was one of the main characteristics of the ancient governments, both monarchical and republican.

The ancient monarchies of Asia were generally aggregates of nations which had once been independent, but had been reduced by conquest to dependence on a common superior. The obvious and rude contrivance for maintaining this dependence was for the ruler of the conquering tribe to place a governor in each subject community, who collected a revenue from the inhabitants, and having first defrayed from it the expenses of his own government, paid over the surplus, as a tribute, to his chief. This appears to have been the character of the Persian Empire and its satrapies, as described by Herodotus; and such, with only slight differences, has been the character of the Oriental governments at all times.

"The plan," says Mr. Mill, "according to which the power of the sovereign was exercised in the government of Hindostan, resembled that which has almost universally prevailed in the monarchies of Asia, and was a contrivance extremely simple and rude. In the more skillful

governments of Europe, officers are appointed for the discharge of particular duties in the different provinces of the empire; some for the decision of causes, some for the control of violence, some for collecting the contingents of the subjects, for the expense of the state; while the powers of all center immediately in the head of the government, and altogether act as connected and subordinate wheels in one complicated and artful machine. Among the less instructed and less civilized inhabitants of Asia, no other plan has ever occurred to the monarch, for the administration of his dominions, than simply to divide his own authority and power into pieces or fragments, as numerous as the provinces into which it was deemed convenient to distribute the empire. To each of the provinces a vice-regent was dispatched, who carried with him the undivided authority and jurisdiction of his master. Whatever powers the sovereign exercised over the whole kingdom, the vice-regent exercised in the province allotted to him; and the same plan which the sovereign adopted for the government of the whole, was exactly followed by the vice-regent in the government of a part. If the province committed to his sway was too extensive for his personal inspection and control, he subdivided it into parts, and assigned a governor to each, whom he intrusted with the same absolute powers in his district as he himself possessed in the administration of the greater department. Even this inferior deputy often divided his authority, in the same manner, among the governors whom he appointed, of the townships or villages under his control. Every one of those rulers, whether the sphere of his command was narrow or extensive, was absolute within it, and possessed the whole power of the sovereign, to levy taxes, to raise and command troops, and to decide upon the lives and property of the subjects. . . . The expense of the government of each vice-regent was defrayed out of the taxes which he levied, and the surplus was transmitted to the superior lord, to whom he was immediately responsible. From him it was again conveyed to the governor above him, till it reached, at last, the royal treasury."

The existing mode of government in the Ottoman Empire agrees almost exactly with that described by Mr. Mill

in the preceding passage. The whole Ottoman Empire, with the exception of Constantinople and its district, is divided into provinces, and a governor, commonly styled pasha, is placed by the sultan at the head of each. This appointment confers on the pasha the entire subordinate government of his province. The only power which the sultan does not delegate to his governors is the administration of civil justice, which (as being in a Mahommedan country rather a religious than a political business) is withdrawn from the military pashas and is made to depend upon an officer in Constantinople.

The partition of a large empire into dependencies is the simplest expedient for governing it, and would naturally be resorted to in any barbarous or semi-barbarous country. Accordingly, we find it in ancient Mexico, as well as in most of the Asiatic monarchies both of ancient and modern times.

It is to be observed that in the Asiatic monarchies the subordinate government was modeled after the supreme government, and was almost always delegated to a single officer, who administered his province nearly upon the same principles as those which guided the supreme ruler in the government of the empire generally, or of that part of it immediately subject to his dominion. There are some traces of the military and fiscal powers having been exercised by different persons in the provinces of the ancient Persian monarchy; but in general, both in that and other Oriental monarchies the satrap or provincial governor was both military commander and collector of the tribute. It was his ambition to imitate the state of the monarch his master, and to keep a petty court; and the monarch was little inclined even if he were able, to check the excesses of his viceroy, provided that the latter paid his appointed tribute at the appointed times.

It must not be inferred from Mr. Mill's account of the dependencies of an Oriental monarchy, (which has been cited above), that these dependencies were different in kind from the dependencies of a republic or free state. In every dependency, the delegation of political powers to the subordinate government is (as we have already

explained) nearly unlimited. The government of every dependency is capable of legislating on nearly all subjects, and of executing all laws in force within its territory; and if the government is intrusted to one man, all these powers are necessarily united in his person. The principal differences between the Oriental and European systems of government, with respect to dependencies, appear to be the following: 1. In the Oriental dependencies the subordinate government is almost invariably intrusted to a single person (styled a satrap, pasha, etc.); whereas, in the dependencies of European states, the subordinate government is sometimes more or less popular in its structure; in other words, it consists of a body of persons more or less numerous. 2. In the Oriental dependencies, the whole empire, with the exception of the capital city and a small district attached to it, is parcelled out into dependencies; whereas, in the modern European states, all the territories which do not lie at a great distance from the central power are immediately subject to the supreme government. 3. In the Oriental dependencies, the control of the supreme government over the subordinate government of the dependency is feeble and irregular; whereas, the European states usually exercise a more vigorous control over the local governments of their dependencies.

The powerful REPUBLICS of antiquity likewise kept a considerable number of communities in subjection, which they had reduced either by conquest, or the threat of conquest. Each of these communities had a subordinate government, and (unless it were prevented by poverty) paid a tribute, in money or in kind, or in military or navy supplies, to the dominant state. The subordinate government of these dependent communities was generally presided over by a military or civil officer who represented the supreme government.

A remarkable example of a system of dependencies under a Greek republic is afforded by the subject allies of Athens in the period of her ascendancy. After the defeat of the great Persian expedition against Greece, and the secession of the Spartans from the command of the allied Greek forces, the Athenians gradually reduced

their allies in the islands and coasts of the Ægean sea to a state of dependence, and converted the voluntary contributions which the allies had made to the treasury at Delos for the furtherance of the common cause, into a tribute, which was remitted to Athens, and for the expenditure of which the Athenians rendered no account. These subject communities retained their separate governments, (which were organized on democratic principles), and administered generally their own internal affairs; but they were under the control, either permanent or occasional, of Athenian inspectors or governors, or military commanders. Moreover, the courts of the dependency were deprived of their jurisdiction in all important cases, which could only be tried by the Athenian tribunals. In some instances, the Athenians seized a portion of the lands of a subject state, and divided them among certain of their citizens. Citizens who obtained such portions of land were called *cleruchi*, and the settlement was called a *cleruchia*. Subject states of the latter description bear a close analogy to the *coloniæ* of the Romans, as will appear presently; although they differed from the Roman *coloniæ* in not being intended to serve any military purpose.

Many of the Athenian dependencies were transferred to Sparta by the unfortunate event of the Peloponnesian war, and were governed by Sparta, during the short period of her ascendancy over them, in nearly the same manner in which they had been governed by Athens; except that their subordinate governments were made oligarchical, and that the Spartan governors (styled harmosts) appear to have interfered more extensively with the internal affairs of the dependent communities than the Athenian governors had done. But besides her dependent allies beyond the sea, Sparta likewise possessed in her Peloponnesian territory, from the earliest times, a class of subjects, named Periœci. These subjects of Sparta seem to have lived in separate villages or communities, to have been placed under Spartan governors, and to have paid tribute by certain districts; so that they perhaps rather formed a cluster of dependencies around the dominant Spartan state, than a class of subjects or serfs under the

immediate dominion of the Spartan government. The same relation probably subsisted in other Greek republics, which had subjects; for example, in the Cretan states and in Argos.

The transition from the complete independence of a political community to its complete dependence on another state, and from the complete dependence of a separate community to its absorption and incorporation into the dominant community, might be so gradual as to render it difficult to determine, in any individual case, 1. At what moment the supreme government of the independent state became the subordinate government of a dependency; 2. At what moment the subordinate government of the dependency became a merely municipal body, and the inhabitants of the dependency became directly subject to the government of the dominant country. It has been already remarked that a tributary community is not necessarily dependent; and such was the case of the allies of Athens after the Persian war, so long as the payment of their tributes remained voluntary. But by successive and almost insensible encroachments, Athens converted their voluntary tribute into a compulsory tax, and thus rendered them dependent upon her. The passage from a state of bare dependence into an entire incorporation with the dominant state might be equally gradual. "The degrees" (says Wachsmuth, in his 'Political Antiquities of Greece') "by which a Greek community passed from the loosest to the strictest dependence, and from thence to the entire loss of its separate existence, and its merger in the dominant state, may be stated as follows: 1. The subjecting it to the payment of a compulsory tribute. 2. The requiring it to furnish troops, to be commanded by generals of the dominant country. 3. Supreme jurisdiction, arrangement of the magistrates, and other interferences with the internal affairs of the dependency; as, for example, when the Mytilenæans prohibited their revolted allies from teaching writing and music to their children. Beyond this point, a dependent community lost its separate existence; and its citizens became integral members of the dominant state, either by being admitted to its

rights of citizenship, or by being degraded to the condition of *periœci*."

We may here observe that the foreign settlements, or colonies (*ἀποικίαι*), of the Greeks, were in general independent from their first establishment; and that if they became dependencies of the mother-country, it was by means of subsequent conquest or other aggressive interference; as was the case when some of her Ionian allies were reduced to subjection by Athens. "The migrations of the Greek colonists (says Bishop Thirlwall) were commonly undertaken with the approbation and encouragement of the states from which they issued; and it frequently happened that the motive of the expedition was one, in which the interest of the mother-country was mainly concerned: as, when the object was to relieve it of superfluous hands, or of discontented and turbulent spirits. But it was seldom that the parent state looked forward to any more remote advantage from the colony, or, that the colony expected or desired any from the parent state. There was in most cases nothing to suggest the feeling of dependence on the one side, or a claim of authority on the other. The sons, when they left their home to shift for themselves on a foreign shore, carried with them only the blessing of their fathers, and felt themselves completely emancipated from their control. Often the colony became more powerful than its parent, and the distance between them was generally so great as to preclude all attempts to enforce submission."

The ties which bound together a Greek mother-country and its colony were not political, but moral. The relation between the state which sent out the emigrants, and the new state which they established, was conceived as analogous to the relation which subsists between a parent and a child; but, it is to be observed, between the parent and the emancipated, not the infant child. Accordingly, a mother-country was considered as morally bound to protect and assist its colony when involved in difficulties; while the colony was expected to pay certain marks of deference and respect, particularly in religious matters, to the mother country.*

* See also (Pt. I.) Adam Smith's "Essay on Colonies," this volume.—Ed.

The foreign settlements of the Phœnicians appear to have been nearly similar to those of the Greeks, in respect of their relation to the mother-country. Whatever may have been their original condition, they seem for the most part, and especially the distant and powerful Carthage, to have acquired independent governments at an early period of their existence. "The great and difficult art (says Heeren), of keeping colonies in dependence, which the Carthaginians understood so completely, was not equally well-known to the Phœnicians. The colonies of the Phœnicians, favored by their position, grew more powerful than the mother-state, and became independent, if they were not independent from the beginning. The causes of their independence are obvious. In the first place, the Phœnicians (like other commercial nations in later times) extended their settlements over a wider surface than their power enabled them to command. In the second place, Tyre was not so centrally situated with respect to its colonies, as Carthage; and hence, even if it had been able to raise equally large armies, it would not have been able to use them with equal effect in all directions. Carthage could, without any great exertion, transport its armies to Sicily and Sardinia; England can, in our days, send armies to the East Indies: but if Tyre had attempted to send an Asiatic army to Spain, the attempt would probably have failed. With the exception of the neighboring islands, such as Cyprus and others, or of some of the more distant settlements, particularly the mining colonies, where the natives were forced to labor, the relation of the Tyrians with their colonies was confined to commercial intercourse, and the duties of a reciprocal affection, the latter of which were never omitted, and the former was constantly maintained."

The republic of Carthage had a double set of dependencies. One set consisted of the African towns and provinces in the vicinity of Carthage, which appear to have been tributary to the chief city, and to have stood to it in nearly the same relation as the islanders of the Ægean sea to Athens, and the towns of the Periœci to Sparta. The unwilling obedience which these towns and

districts rendered to Carthage, on account of the oppressiveness of the rule to which they were subject, appears from the alacrity with which they joined the revolted mercenaries after the first Punic war. These dependent communities never were incorporated with the dominant republic either in government or in feeling; and their proneness to revolt on the approach of an enemy always continued to be the main cause of the internal weakness of Carthage. That the subject allies of Carthage were its vulnerable point had been likewise previously known to the Athenians, who are reported by Thucydides to have intended to have attacked Carthage in this quarter, if they had succeeded in subjugating Sicily.

The other set of Carthaginian dependencies consisted of its foreign settlements, which appear to have been partly commercial and partly military. The Carthaginians had establishments on the coast of Spain, in the Balearic islands, Sardinia, Corsica, Sicily, Malta, and elsewhere. The Carthaginian settlements did not, like those of the Greeks, become independent; but, like those of Rome, remained in a state of dependence upon the mother country.

The Carthaginian dependencies, both in Africa and beyond the seas, appear to have been placed under military governors. The principal function of the military governors of the African cities and districts was the collection of the tribute due to the dominant state. Polybius states that the severity with which these commanders exacted the tribute was the main cause of the disaffection of the subject communities during the war of the mercenaries. This severity, however, was exercised with the full approbation of the Carthaginian government; for Polybius says, that the Carthaginians admired and honored the governors who levied the largest tribute, and employed the harshest measures for levying it, and not those who dealt mildly and humanely with the people. The Carthaginians appear to have derived little tribute from their foreign possessions; but they maintained troops and military commanders in them; and the latter were probably provincial governors. Sardinia was lost to the

Carthaginians by the defection of the garrison of mercenaries, which was commanded by a Carthaginian citizen.

The Roman state, likewise, by its conquests and encroachments, gradually acquired an immense system of dependencies. It is not consistent with the purpose of the present Essay to enter at large into the extensive subject of the dependencies of the Roman republic and empire; but it will be convenient, on account of their great importance in the history of the world, to indicate briefly their nature.

The Roman dependencies fall into two main classes, *viz.*, those in Italy, and those out of Italy.

With the exception of the City of Rome, and a small district belonging to it, the whole of Italy, as it was gradually absorbed into the dominions of the Roman Republic, was formed into a system of dependencies.

One portion of the independent states of Italy, being reduced by Rome and incorporated with the Roman Commonwealth upon different conditions, obtained the name of *municipia*. The *municipia* were city communities, once independent, which were admitted by Rome to a more or less ample participation in the rights of Roman citizens; but which, after their annexation to the Roman state, retained their own distinct city organization, their own political divisions and magistrates, their own legislative assemblies, and their own laws and judicatories; so far as these were consistent with their dependence upon the Roman government. Moreover, upon their annexation to the Roman state, their population was not disturbed, nor were the rights of the existing proprietors interfered with for the benefit of Roman citizens. But they were subject to the general control of the sovereign body in Rome; and their government, having originally been the sovereign government of an independent state, became the subordinate government of a dependency.

The other principal class of Roman dependencies in Italy consisted of the *coloniæ*. The *coloniæ* were settlements of Roman citizens in Italy, who occupied a conquered town, divided the whole or a large part of the lands

belonging to its citizens among themselves, and became the *coloni* or cultivators of the lands thus appropriated. A subordinate government was established in a *colonia*, which appears not to have differed essentially from that of a *municipium*. But although the *jus publicum*, or constitutional law, of a *municipium* and a *colonia* would naturally be nearly similar, inasmuch as they were dependencies subject to a common superior, yet the *jus privatum*, or civil law, of a *municipium* would naturally be different from that of a *colonia*. For the *municipium* retained the civil law which it possessed when it became a dependency of the Roman state; whereas a *colonia*, as being a settlement of Roman citizens, adopted the Roman system of jurisprudence.

The preceding account of the origin of a Roman *colonia* shows its difference from that of a Grecian colony.* The Grecian colonies were independent from the beginning; they were sometimes founded without the express authority of the government of the state from which the colonists proceeded; or, at any rate, they were not intended to increase its power by enlarging its dominions; and they were usually established in some unoccupied or partially occupied territory. The Roman colonies, on the other hand, were in general established in existing towns, the citizens of which were ejected and deprived of their lands; the colonists were sent out by the authority of the government for the purpose of confirming and extending the Roman influence; and they were paid for this service by grants of lands. Moreover, instead of being independent of the parent state, they were strictly dependent on it, and the politcal rights of the colonists were very limited. In fact, the Roman colonies were in their origin (as Niebuhr remarks) little more than garrisons in conquered fortified places, where land was allotted to the soldiers instead of pay and provisions. The Greek colonies were somewhat similar to the Eng-

*Reference should be made to Pt. 1, Adam Smith's «Essay on Colonies,» this volume. «The Latin word (*colonia*),» he says, «signifies simply a plantation. The Greek word (*ἀποικία*), on the contrary, signifies a separation of dwelling, a departure from home, a going out of the house.» — Ed.

lish colonies in America, especially after the independence of the latter; while the Roman colonies rather resembled the Venetian colony in Crete, and the recent French colony in Algiers. The only establishment in Greece which resembled the Roman colonies were the Athenian *cleruchiæ*, of which an account has been already given.

The Roman dependencies out of Italy were the PROVINCES.

The Roman provinces were originally independent states, which, having been conquered by Rome, were, to use the Roman phrase, "reduced under the formula of a province"; that is brought within the rules determining the condition of a provincial dependency. The rules determining this condition were very various, and probably only agreed in one circumstance, *viz.:* that the province was placed under the immediate superintendence of a resident Roman governor. The provincial governors, under the republic, were first styled prætors, and afterward proprætors and proconsuls; and their authority extended over all civil and military affairs in the province. An alteration in this system was made by Augustus, who divided the provinces into the two classes of SENATORIAN and IMPERATORIAL: in the senatorian provinces a governor was appointed by the senate, whose power extended over the civil departments of the government, while the military functions were reserved to an officer appointed by the emperor; in the imperatorial provinces, the governor, styled the *legatus Cæsaris*, or lieutenant of the emperor, directed both the civil and military affairs of the province. Numerous other changes in the titles and distribution of the provincial governors were made by the subsequent emperors, which it is not necessary for me to pursue.

The regulations respecting the appointment, powers, and rank of the Roman governors, and the duration of their office, constituted the only part of the provincial institutions of Rome which were uniform throughout the provinces. In all other respects, there was the utmost diversity in the provincial governments. It was the general policy of the Romans not to make more changes

in a conquered territory than were necessary for the purpose of reducing it to complete subjection. Hence, when they had firmly established its dependence on Rome, by garrisoning all its strong places with Roman legions, and collecting all its public revenues by Roman officers, they were content to allow the ancient civil law of the country, its religion, and other peculiar institutions of a like nature, to remain untouched. The Romans appear to have adopted this course partly upon reflection and from a conviction of its expediency, and partly from a certain haughty indifference which led them to turn away with contempt from questions about matters not affecting the maintenance of their own authority. Accordingly there were sometimes petty native rulers, who retained their former title and dignity, under the supremacy of Rome, as, for example, the tetrarchs of Judea. It may be added, that the entire state of Judea, as described in the historical books of the New Testament, affords a lively image of the continuance of the peculiar laws and religious usages of a Roman dependency out of Italy.

When a community had become a provincial dependency of Rome, its law was derived from one of the four following sources: 1. The FORMULA of the province, which prescribed the terms upon which it was annexed to the Roman state, at the original conquest. 2. Acts of the supreme Roman legislature, binding the province specially, or the provinces generally. For example, the power of obtaining a guardian by the appointment of certain public officers, which was created in Rome by the Atilian law, was extended to the provinces by the Julian and Titian law. 3. Edicts of the provincial prætors, or governors. A provincial prætor (like the prætor *urbanus*) originally commenced his government by stating at length, in an edict which he promulgated, the principles or maxims which he intended to follow in administering justice, and generally in conducting the government of the province. A full account of the edict which Cicero issued when he was governor of the province of Cilicia, is preserved in his letters. It was natural for a new governor, both for his own convenience and for the benefit

of the provincials, to adopt the whole or a large part of the edict of his predecessor. An edict, of which the substance was thus borrowed from a previous edict, was called *tralatitium;* and, having been retained by several successive governors, became an edict peculiar to the province. 4. The native jurisprudence of the country, as it existed before the country became a Roman dependency. The provinces retained generally, upon their first reduction under the Roman sway, nearly all the peculiar institutions which were not inconsistent with the supremacy of Rome. Accordingly, their rules of law respecting property, contracts, marriage, and the like, continued to be administered by the courts of the province as heretofore. We know in some cases, that the continuance of its own laws (*i. e.* its laws relating to such subjects as those just mentioned) was expressly promised to the province; and when some of the provinces are said to have been governed by their own laws (to have been αὐτόνομοι), this is the meaning of the expression.

The Roman provinces were tributary to Rome; and the public revenues were collected by Roman *quæstors*, who remitted the produce of the taxes to the Roman treasury, after having defrayed the expenses of the provincial government. A province either paid its tribute in a gross sum, or its tribute was levied by a land-tax, a tax for pasturage, or custom-duties, imposed directly by the Roman government on the provincials.

Although the revenues and supplies derived from the provinces were considered an important resource of the Roman states, yet it does not appear that the regular taxation was very oppressive to the provinces. The chief evils inflicted upon the provinces arose from the rapacity of the governors, and the extortions which they practiced for their private gain. The provincial governors were necessarily invested with very extensive powers, and they were imperfectly controlled either by law or the opinion of their fellow-citizens. A Cicero or an Agricola might be restrained by his own conscience from plundering his provincial subjects; but, when there was no other restraint than conscience, it was natural that the conduct of the provincial governors should have been

such as it is described to have been. The rapacity of Verres has become proverbial on account of the elaborate exposure which it has received from Cicero; and the revolt of the Jews was mainly caused by the unusual extortions of three successive governors. Tacitus states, in the beginning of the "Annals," that the provinces willingly acquiesced in the change from the republic to the empire, on account of the imperfect protection which they had received from the senate and the people; but from a passage in the "Life of Agricola," it appears that this change produced no benefit to the provinces; that a provincial government was still looked upon as a subject of legitimate gain to a governor; and that his power of taking from the provincials was chiefly limited by their incapacity of paying.

Nevertheless, the Romans were able for a long time to maintain the obedience of their provinces, and to suppress every attempt at resistance to their authority. This result was mainly owing to the efficient military system of the Romans, and to the masterly manner in which they occupied a province, by stationing their legions in strong towns and fortified camps, and by making and maintaining their communications by means of the roads and bridges which they constructed. The celebrated lines of Virgil, which (after admitting the superiority of the Greeks in the fine arts, literature, and the physical sciences) make the characteristic excellence of the Romans to consist in their practice of the art of governing, are peculiarly applicable to the system by which the latter ruled their dependencies. And although Greece introduced its arts, literature, and science into Rome, and is admitted by the Roman writers to have civilized its fierce conqueror, yet it is to be remembered that Rome, on the other hand, introduced its system of law into Greece where it remained in force until the fall of the Eastern empire, and, indeed was not quite extirpated by the Ottoman conquerors. It is a great error to represent the Romans as having been, during their whole national existence, a mere rude community of conquerors, who contributed nothing to the advancement of mankind. The Romans were as

much superior to the Greeks in the science and art of civil government, as the Greeks were superior to them in the physical and mental sciences, and in literature; and the law of the Romans has, perhaps, done as much for modern civilization as the literature and science of the Greeks.

The distinctions which originally existed between different classes of dependencies in Italy, and between those of Italy and the provinces, gradually disappeared, under the assimilating influence of a common supreme government. The *jus Latii*, or privileges of the Latin confederate states, were first extended to various communities in Italy; then the rights of Roman citizenship were communicated to the whole of Italy by the Julian law after the Social war; and lastly, a constitution of Caracalla extended these rights to the provinces. Before the time of Caracalla, many towns in the provinces had been erected into *municipia*, and many colonies had been founded in them; but under the empire, the distinction between a *municipium* and a colony had been nearly forgotten, and the peculiar institutions of the Italian *municipia* had become obsolete.

It may be observed, with respect to the extension of the rights of Roman citizenship to the provinces under the empire, that it did not then imply the important consequences, or produce the practical difficulties, which flowed from the grant of the rights of Roman citizenship to the towns of Italy, by the Julian law, during the Social war.

The most important right conferred upon the freemen of the Italian cities after the Social war was the *suffragium*, or right of voting in the general asssembly of the Roman citizens. Inasmuch as the general assembly of the Roman citizens was only held at Rome, and as no citizen could give his vote otherwise than in person, it was necessary that every inhabitant of an Italian city should, in order to exercise his Roman suffrage, repair to Rome. At first, all the Italians were distributed into eight new tribes, in order that their votes might be nullified by the preponderating numbers of the thirty-five purely Roman tribes; but when Cinna promised to distribute the Italians equally through

all the tribes, a vast multitude was (we are told) attracted to Rome from the whole of Italy. It was the want of the modern contrivance of political elective representation, and the consequent necessity of every citizen giving his suffrage in person, which rendered the continuance of a republican government in Rome impossible, after the rights of Roman citizenship had been extended to the Italian cities. Even if no animosity had existed between the old Roman citizens and the Italians newly admitted to the rights of Roman citizenship, it was impossible that the republic should endure, comprehending, as it did, the chief part of Italy, and governed by citizens who could only give their suffrage in the general assembly at Rome. Accordingly, the interval between the Social war and the empire is filled with internal confusion and discord; and the system which the Julian law was intended to create, never could be consolidated. Italy, after it had been conquered by Rome, might, according to the ancient systems of government, have been governed in one of two ways. The Italian towns might either have been a cluster of dependencies around the dominant city of Rome and its territory, like the dependent Laconian communities around Sparta, and the Libyan dependencies around Carthage; or the whole of Italy, Rome included, might have been directly subject to a monarchical government established in Rome. The consequences of the Social war had rendered the former of these modes of government impossible; and had therefore necessitated the adoption of the latter. By the establishment of the Imperial government (which was monarchical in substance, though not in form), the freeman of Mantua or Capua, although he was a Roman citizen, was relieved from the necessity of going to Rome, in order to exercise his suffrage there; and he was virtually equal in rights to the citizen of Rome, because the latter was substantially deprived of the suffrage which the former could not conveniently exercise. Accordingly, when the Emperor Claudius advised the senate to confer the full rights of Roman citizenship upon the Transalpine Gauls, it was easy for him to represent this extension of political rights to an excluded class, as a liberal concession, analogous to the

equalization of the political rights of the plebeians with those of the patricians in ancient times. But the patricians and plebeians inhabited the same city, and the latter could easily exercise their rights as citizens, in person; whereas the communication of the rights of Roman citizenship, as they existed in the time of the contests between the patrician and plebeian orders, to the Transalpine Gauls, would have rendered the conduct of the government impossible.

In like manner, the Roman citizens who were sent out as colonists were probably not at first intended to be placed in a condition politically inferior to that of their fellow-citizens whom they left behind at Rome. But the impossibility of their exercising their Roman suffrage without ceasing virtually to be resident in their colony, gradually led to the exclusion of the colonists from the public rights of Roman citizenship. It is only by means of representative institutions that a large tract of country can (as in England, France, and the United States) be subjected directly to a popular government. The chief advantage of representative institutions is, that they render it possible for a popular government to act directly upon a large territory, and thus enable it to avoid the recurrence to a system of dependencies.

During the reign of Constantine, a systematic re-division of the provinces of the Roman Empire, and a fresh adjustment of the powers and rank of the provincial governors, were made. The financial and judicial were severed from the military powers, and were conferred on a double set of functionaries. Moreover, an attempt was made, by an improved system of posts, and frequent missions of official inspectors, to exercise a more efficient control over the provincial governors. By this time, the influence of the Roman military, administrative, and judicial systems had been sensibly felt in the provinces, and the Roman language, institutions, and law had gradually superseded those of the natives. The scientific cultivation of law by the Roman jurists, the vast superiority of the Roman jurisprudence to that of all other nations, including the Greeks, and at a later period, the digestion of the Roman law into codes, naturally led to

its adoption throughout the provinces. It may be added that, in the age of Justinian, it was customary for the civil governors of provinces to receive a legal education in the Roman schools. But notwithstanding the uniformity of the legal system thus introduced throughout the Roman Empire, the provinces always retained subordinate governments, and consequently their character of dependencies; and the local councils of decurions, which the provincial towns had received in imitation of the *municipia* and colonies of Italy, were the origin of the free towns of the middle ages.

### § 2. DEPENDENCIES OF THE EUROPEAN STATES IN MODERN TIMES.

It will be unnecessary for me to adduce as copious examples of modern as of ancient dependencies; partly because the dependencies of the modern European states are better known, and partly because their characteristic peculiarities will be more often adverted to in subsequent parts of this Essay.

The governments which arose in Europe upon the ruins of the Roman Empire, though widely different in most respects from the system to which they succeeded, resembled it in being, to a great extent, aggregates of dependencies. In the feudal kingdoms, a greater baron or feudatory possessed political power so extensive that they virtually rendered him the head of a subordinate government. He usually possessed the power of administering justice, of maintaining public order, and of collecting taxes for public purposes; and the exercise of these powers naturally involved the exercise of a power of subordinate legislation. By convening his court, he could make a law binding his vassals, provided that it was not inconsistent with the terms of his infeudation. The tribute which he yielded to the king was in general rendered in military service; although a direct payment was sometimes made.

His power of administering justice, and his power of subordinate legislation involved in it, naturally led to the formation of a separate system of law in the territory included in his fief; thus in France, the provinces

retained different systems of jurisprudence, even after the powers of the great feudatories had been absorbed by the Crown. It was only when the king had encroached on the jurisdiction of the great feudatories, and had brought their rere-vassals into more immediate relation with himself, by means of his judges and other officers, that the greater feudal dependencies became directly subject to the supreme government.

Another important class of dependencies in modern Europe arose from the reduction of several independent states under the dominion of the head of another independent state, by means of inheritance, marriage, or conquest.

The most remarkable of these for their extent, political importance, and distance from the dominant country, are the European provinces of the Spanish monarchy, as they existed in the sixteenth century; namely, the kingdoms of Naples and Sicily, the duchy of Milan, and the Netherlands. These provinces were not strictly dependencies of Spain, but were, in form, independent kingdoms whose king was likewise king of Spain; so that they must, if the form of their institutions be alone considered, be treated as communities having a common head, but not belonging to the same empire. But the relation in which they stood to the Spanish government was such, that in practice they approximated closely to dependencies.

These countries were too distant from the center of the Spanish government to admit of being governed directly by the king. Accordingly each of them was placed under a Spanish governor, (called a viceroy in Sicily and Naples), possessing the ample delegation of powers proper to a subordinate government. The powers of the Sicilian viceroy were limited in practice by the ancient feudal constitution of the island; but in Naples the elements of resistance among the native population were weak, and the foreign viceroy had an almost unlimited sway. In the duchy of Milan, likewise, the municipal institutions of the towns at first placed some check upon the powers of the Spanish governor; by degrees, however, he became absolute, and on account of the frequent wars

in which Northern Italy was involved, the military element of the government preponderated over the civil, and thus gave it a harsh character. In the Netherlands, the political powers possessed and exercised by the provinces and towns were more extensive, and the spirit of the people was more active and independent. The separation of a large part of the Netherlands from Spain in the sixteenth century is well known to have been mainly owing to the attempt of Philip II. to force the Catholic religion upon the Protestant portion of the people. Nevertheless, the spirit of resistance engendered by his religious persecutions was much fomented by the discontent at the employment of Spaniards in the country, and by the fear of the nobles that their importance might be extinguished under the Spanish influence.

Each of these countries paid a considerable tribute to Spain, in addition to the maintenance which they furnished to the Spanish troops quartered upon them. The public revenue which they produced was probably considered the main advantage which they afforded to the Spanish monarchy. Thus the annual tribute of the Netherlands often amounted to a million and a half of ducats. «The Netherlands (said a Venetian ambassador) are the real treasures, and mines, and Indies of the King of Spain.»

The Spanish provinces which we have been considering retained their native systems of private law unchanged, and the ordinary courts appear to have been composed of native judges. Even in Naples, which remained for the longest time dependent upon Spain, the legislation of the viceroys does not seem to have been considerable, or to have had for its object the introduction of any of the peculiarities of the Spanish legal system.

The relation of the Spanish dependencies in Europe to the dominant country bears some analogy to the relation of the Roman provinces to Rome. The absolute military governor, the military character of the government, the existence of an ancient native civilization, and the maintenance of the native law under the foreign government, form obvious points of resemblance. The Span-

iards, however, did not possess that power of perceiving clearly, and of pursuing steadily, the important ends of political government, which made the Romans so formidable, but, at the same time, so useful to their subjects, and enabled them to exercise so pervading an influence over all their provinces. If the kings of Spain had adopted the Roman policy of not interfering with the religion of the provincials, they might probably have retained for a considerable time their supremacy over the United Provinces, the most valuable dependency of the Spanish monarchy.

Another system of dependencies in modern Europe, of a similar character, are the dependencies of France, which were created by the conquests of Napoleon Bonaparte; such as the kingdoms of Italy, Naples, Spain, Holland, and Westphalia, and the Confederation of the Rhine. These were nominally and in form independent states; but they were intended by Napoleon to be virtually dependent on his government, and were always so treated by him. Thus he informed his nephew, the Grand-Duke of Berg, that his first duty was to himself (Napoleon), and his second to France; and that all his other duties, including those to the country placed under his charge, were subordinate to these. This declaration has been much censured; but it agrees with the almost universally received maxim for the government of dependencies, in postponing the interests of the dependency to those of the dominant country; and it only differs from that maxim in avowedly distinguishing between the interests of the dominant country and those of its ruler.

The system of French dependencies created by Napoleon was never consolidated, and therefore the mode of their government presents scarcely any characteristics which can be compromised in a general description. It may, however, be observed that the convenience of possessing an uniform system of written law led to the introduction of the French codes into several of those countries; and that in some of them, as in Holland, Belgium, and the territory now forming the Rhenish province of Prussia, these codes have been retained since the separation of those countries from France.

If Napoleon had been able to consolidate the system of French dependencies projected by him, he would probably have established a system closely resembling that of the Roman provinces. When we reflect on the differences between the state of the countries held in subjection by Rome, and the state of Europe at the beginning of the nineteenth century, this remark alone shows how little his plans of conquest and government were calculated for stability.

We proceed next to the consideration of the most important class of the dependencies of the modern European states; namely, those which have owed their origin to a spirit of commercial enterprise, sometimes peaceable, and sometimes accompanied by a spirit of conquest.

The earliest dependencies of this class are those established by the maritime republics of Italy in the Levant. Although many of these settlements were fortified, and strongly defended, yet they were mainly intended to serve as factories, and to protect and facilitate the commercial intercourse of these republics with Asia and the countries lying to the north of the Black Sea.

During the short existence of the Latin Empire of the East, the Venetians, Genoese, and Pisans had factories in Constantinople, which obtained a separate political existence, and were governed, to a considerable extent, by their own magistrates. At the return of the Greek Emperor, Michael Palæologus, in 1261, the Venetians and Pisans were allowed to preserve their respective quarters; but to the Genoese, on account of their superior power and services to the Emperor, was assigned the suburb of Galata, or Pera, on the opposite side of the harbor. The Genoese at Galata retained all the characteristics of a Genoese colony; but they acknowledged their subjection and allegiance to the Greek Emperor. After a time, however, they threw off their dependence upon the Greek Empire, and, with the assistance of the Venetians, even defeated the Emperor Cantacuzenus in a sea fight, within sight of his own city. The political subordination of Galata to its mother country seems to

have been always maintained. An annual Podestà was sent out from Genoa, whose election was subject to the same restrictions as the elections of the chief officers of Genoa itself. The local government of the *comune* was vested, under the real or nominal supremacy of the Greek Empire, in this Podestà, together with a *consiglio*, after the manner of an Italian republic. There were numerous regulations respecting his duties; and the government of Galata was generally bound to observe the statutes of Genoa. The power of altering the laws imposed on it by the supreme government of Genoa was not conferred upon the subordinate government of the colony. The Genoese, likewise, possessed other factories in the Black Sea, particularly Kaffa, in the Crimea, which they bought from a Tartar chieftain in the beginning of the fourteenth century. The local government of Kaffa was permitted to change the laws imposed on it by Genoa, without previously obtaining the consent of the Genoese government to the change; a latitude which was probably allowed to it on account of its distance and its dangers. These important settlements and factories remained in the possession of Genoa, until the taking of Constantinople by the Turks, when they all fell under the Mussulman power.

The Venetians, by the fourth crusade, acquired a portion of the divided Greek Empire, and a district of Constantinople. At the same time they likewise acquired Candia by purchase; and although they afterward lost their power in Constantinople, they made conquests, and established colonies and factories in the Black Sea. the Propontis, the Archipelago, the Morea, the coast of Syria, Cyprus, and the coasts and islands of the Adriatic. Venice, and the other Italian republics, commenced, even before the Turkish conquest, the practice of establishing commercial factories in the cities of the Levant. These were separate walled precincts (like those once assigned to the Jews in the European towns), in which the foreign merchants lived with their families, and were governed by magistrates of their own, according to their own laws. They resemble very closely the Portuguese factory at Macao, and the English factory at Canton; only that in

the latter, the jealousy of the Chinese never allowed women to be introduced, and consequently, prevented the permanent foundation of a settlement from being laid. The treaty of the Venetians with the Emperor Michael, in 1264, contained a stipulation that the Venetians at Constantinople and other cities of the Greek Empire were to retain their own courts, with further definitions of the relations of these to the native tribunals. Similar stipulations as to the allowance of a Bailo with jurisdiction, to the Venetians, were contained in treaties made with the Sultan in 1454 and 1479. The system thus introduced has given rise to the singular practice of the European ambassadors and consuls exercising a criminal, and sometimes a civil jurisdiction over their fellow-countrymen in the Mahomedan countries in the Levant and Barbary; and of withdrawing them from the native tribunals, by virtue of treaties made at different times with the Porte.

The Venetian colonial dependencies were, to a certain extent, organized after the pattern of the mother-country. It was the object of the republic to induce its citizens to settle in Greece, and it granted fiefs to its nobles in different places with this view. The isle of Candia was colonized by Venetians in 1212; the land was divided into three parts, of which one part was reserved to the Republic, one part was granted to the church, and a third part was subdivided into five hundred grants to the Venetian adventurers, to be held upon condition of their performing military service.

"The island was presided over by a government, having an organization similar to those in the other foreign possessions of Venice. The entire body of the Venetian *nobili*, and their descendants, formed the great council of the island, at the head of which was the duca (or doge), assisted by two councilors. The doge was originally appointed for a longer time; but afterward held the office only for two years. Two avogadori, two camerlenghi, and a massaro (the latter of whom was always a Venetian colonist, and was destined for the control of the camerlenghi), discharged the administrative offices. There was also a number of judicial officers, all of whom

were likewise required to be colonists. The feudal cavalry was commanded by a proveditore, and the entire military force by a captain-general."

The native Greek population of Candia often rebelled against the Venetian government; but in 1361, a rebellion of the Venetian colonists themselves took place, for the purpose of throwing off the yoke of the mother-country. The colonists refused to pay a tax imposed upon them for the maintenance of the harbor of the city of Canea, and demanded that some of them should sit as representatives in the great council of Venice. But these pretensions, and the attempts to enforce them, were soon suppressed by a Venetian army.

It was the policy of Venice to encourage the members of her noble families to migrate to the colonies for the purpose of enriching themselves; and to adopt the families thus enriched into the highest order of nobles. It was only by a system of the strictest control over the governors of the ultra-marine dependencies, that Venice maintained them in subjection to her; and the supreme government, in order to avoid giving any unnecessary offense to its governors, was induced to overlook their oppressions of the people placed under their immediate rule. Accordingly, the Venetian empire never was firmly consolidated; and although the Dalmatian coast and the Morea were at no great distance from the seat of the supreme government, the dependent parts, like the subjects of Carthage, Athens, or Sparta, always remained a loose aggregate of communities, ready to fall to pieces at the first blow.

But, as soon as the invention of the compass, the circumnavigation of Africa, and the discovery of America, had given a mighty impulse to distant mercantile enterprise, the civilized commercial world was no longer nearly confined to the Mediterranean; the ancient communications of trade were abandoned; and new fields of colonization and conquest were opened beyond the ocean.

As the expedition which discovered America was a Spanish expedition, the Spaniards naturally became the first colonizers of America. Having easily subdued the half-civilized natives, they established a government which

was entirely conducted by Spaniards, and was strictly dependent upon the Spanish monarchy. The main advantage which Spain originally expected to obtain from her American colonies consisted in the revenue derivable from their gold and silver mines. To this source of profit was subsequently added the supposed advantages of her monopoly of the colonial trade. The latter system appears to have been mainly of Spanish origin though it had been previously introduced by the Venetians into their colonies in the Levant; and, at all events, it was carried to a greater extent, and persisted in with greater obstinacy, by Spain, than by any other country. The supposed advantages arising from these two sources could only be secured by maintaining the American colonies of Spain in a state of strict dependence upon the mother country. Accordingly, the principle of the supremacy of the Spanish monarch in Spanish America was strongly asserted. The ultimate property of the soil was held to reside in him, and all public officers were regarded as acting by his authority. The two viceroys who represented the King of Spain in his Spanish dominions possessed as ample powers as was consistent with their being merely the heads of a subordinate government. But, considering the distance of America from Spain, and the imperfection of the arts of navigation and war in the sixteenth century, it is probable that the Spanish colonies in America would have become independent in no long time after their foundations, had it not been for the Royal council of the Indies. This council had, under the king, the chief authority over all matters concerning the government of the Spanish colonies in America. Its power extended to all departments, as well legislative as executive; and all public officers in America were appointed by and accountable to it. The establishment of the council of the Indies may be considered as the earliest attempt to exercise constantly a vigilant control over the subordinate governments of dependencies, by means of a separate public department in the dominant country.

A considerable body of laws peculiar to the Spanish colonies in America was gradually formed by the legis-

lation of the council of the Indies and of the American viceroys; which have been collected and published under the title of "Recopilacion de Leyes de los reynos de las Indias."

It has been recently shown by authentic evidence, that the only solid advantage which Spain was supposed to have derived from her American colonies, (namely, the produce of the tax upon the mines of gold and silver,) has been greatly exaggerated. On the results of her system of colonial monopoly, we shall make some remarks lower down.

The tropical regions of the mainland of America remained in the undisturbed possession of the Spaniards; but many of the West India islands were subsequently taken and colonized by the Dutch, the Danes, the French, and the English. The native population of these islands having become extinct, a working class of slaves was formed in them by the importation of African negroes. The culture of sugar, as well as of coffee and other products suited to a tropical region, was also introduced into them, and followed on a large scale. In this manner, an uniform system of society was established throughout the West India islands; which, at the same time, obtained a great value in the estimation of European governments, on account of the large quantity of their products. Every European government which acquired a West India island, studied, in imitation of the Spanish policy, to monopolize its trade. The regulations for effecting this purpose were necessarily similar; but the local institutions varied according to the government of the dominant nation. Thus the French administered their islands by governors and intendants, without any popular control; whereas in the islands dependent upon England, the power of the governors and their councils was checked by popularly elected Houses of Assembly.

In addition to the Spanish settlements on the mainland of America, and to the settlements in the West India islands which have been just mentioned, colonial dependencies connected with commercial objects were established by the Portuguese, the Dutch, and the French,

in the three other quarters of the globe. But the most important dependencies belonging to this class are comprised in the dominions of the crown of England. A brief view of the British empire, and of the manner in which it has been formed, will throw additional light on the nature of commercial dependencies, and will also illustrate the process by which a single nation may gradually become the head of a large empire.

In the reign of Queen Elizabeth, the territory directly subject to the English Crown and Parliament was as yet limited to England and Wales. Scotland was still an independent kingdom, having its own king and Houses of Parliament. Even at the death of Elizabeth, when the crowns of England and Scotland were united, the kingdom of Scotland retained its independence; which lasted until Scotland became, by the union of 1707, directly subject to the supreme government of Great Britain. England, moreover, possessed some considerable dependencies in the reign of Elizabeth. These were Guernsey, Jersey, and the other small islands in St. George's Channel, which had been a parcel of the duchy of Normandy; the Isle of Man, which had once been dependent upon the kings of Norway, and afterward upon the kings of Scotland; and lastly, Ireland. The conquest of Ireland by Henry II. and its subsequent colonization from England, established its subjection to the English crown. It continued, however, to be considered a distinct kingdom, though (as Blackstone says) a dependent subordinate kingdom, the Crown of which belonged to the King of England for the time being. The King of Ireland, together with the Irish Houses of Parliament, formed the peculiar government of Ireland; which was subordinate to the government of England, consisting of the King of England, together with the English Houses of Parliament. The English Parliament could accordingly legislate for the internal affairs of Ireland. As commonly happens in similar cases, it rarely exercised this power; but in order to restrain the Irish Parliament in the exercise of its power of subordinate legislation, the English government had carried an act through the Irish Parliament, which prohibited the introduction of any bill into that Parlia-

ment without the permission of the king in council. Ireland continued (in the words of the statute of 6 Geo. I. c. 5) "subordinate to and dependent upon the imperial crown of Great Britain;" and "the king with the consent of the Lords and Commons of Great Britain in Parliament had power to make laws binding the people of Ireland," until the year 1782, in which and the succeeding year, the British Parliament surrendered its sovereignty over Ireland. During the eighteen years which followed 1782, Ireland was, legally, an independent state, the king of which was also king of Great Britain; and its political relation to Great Britain was precisely similar to that which subsisted between England and Scotland in the interval between the union of the two crowns and the union of the two kingdoms. In the year 1800, the supreme government of Ireland was extinguished by its own act; and in pursuance of a compact with Great Britain, Ireland became immediately subject to a newly created body, exercising the sovereignty of the United Kingdom of Great Britain and Ireland.

In consequence of the Scotch and Irish unions, the whole of the British islands have become immediately subject to a common government, with the exception of the Channel islands, and the Isle of Man, which continue to be governed as dependencies under that government.

But, besides the territories near the seat of her supreme government, England gradually acquired many distant territories which she necessarily governed as dependencies. The earliest of these distant dependencies which England acquired, were the colonies established by Englishmen in North America. Some of these, as Virginia and the Carolinas, were cultivated by planters, with a view to mercantile profit, nearly in the same manner in which the West India islands were cultivated. Others, as the New England colonies, were founded by Puritans, who sought an asylum from the persecution of the Church of England, in the reign of Charles I; and were, therefore, unconnected with commercial enterprise. The settlements of the English in the West India islands likewise commenced about the same time. Jamaica was acquired by England during the Protectorate; but its

colonization and the establishment of its subordinate government date from the beginning of the reign of Charles II.* All the English colonies established in America and the West India islands, during the seventeenth, and the beginning of the eighteenth century, received a representative constitution, imitated, for the most part, from that of the mother country. They were permitted to manage their own taxation and other internal affairs, with scarcely any interference from the English government; but their trade with England, the other English dependencies, and with the rest of the world, was subjected to numerous restrictions imposed by acts of the English Parliament for the purpose of benefiting the English traders.

Following the example of the Portuguese,† the Dutch, the French, and the English attempted to carry on their trade with the East Indies by means of a Company. The English East India Company, which commenced its operations by establishing a few factories in Hindostan, with the consent of the native princes and upon their territory, has ultimately come to form the chief member of the subordinate government, which, under the British Parliament, rules the vast regions on the continent of Asia, now, directly or indirectly, dependent upon England.

In later times, England has established dependent colonies, for certain peculiar purposes different from any of those hitherto enumerated. Such are Sierra Leone and other stations established on the coast of Africa for the purpose of checking the Slave Trade; and Sydney in Australia, which was established in 1788, as a settlement

*The statement in the text is not quite correct. Cromwell began the systematic colonization of Jamaica: *e. g.* his council voted that 1,000 girls and as many young men should be listed in Ireland and sent over. His proclamation also, after the taking of Jamaica, indicated his intention to provide a civil government for the island, but it is true that such a government was not actually established till Charles II.'s time.—Ed.

†This is not correct. The Portuguese did not work in the East by means of chartered companies. Later in their history, in 1649, they established a Brazil Company under pressure of war with the Dutch, and thus fought the latter nation successfully with their own weapons. Later again, in the middle of the eighteenth century, the Portuguese minister Pombal adopted the same policy in Brazil.—Ed.

for the reception of convicts from England, in consequence of the North American colonies, to which convicts had been previously transported, having then recently become independent.

England likewise possesses some distant dependencies in Europe, which it holds partly for military and naval, and partly for commercial purposes. The chief of these are Gibraltar and Malta.

We will close this general survey of the British dependencies, with a short statement of the natures of their governments, and of the political relations subsisting between them and the dominant country.

The sovereign government of the United Kingdom of Great Britain and Ireland (consisting of the Crown and the two Houses of Parliament) is supreme, for every political purpose, in every British dependency. All the dependencies of Great Britain have this in common, that they are bound by the acts of the British Parliament. The subordinate government of every British dependency must therefore be considered as deriving its existence and its powers from the delegation of Parliament, either express or tacit.

But, although all the British dependencies agree with one another in being subject to the British Parliament, and although all their subordinate governments derive their existence and powers from the express or tacit delegation of Parliament, they differ from one another in respect of the constitutions of their subordinate governments.*

In some of the British dependencies the subordinate government of the dependency resides in the Crown exclusively; so that there is not, either in the dominant country or the dependency, any subordinate authority having a power over the dependency co-ordinate with any of the powers which the Crown, as a subordinate authority, possesses over it. Dependencies belonging to this class are commonly known by the appellation of "Crown colonies."

* It can only be said here, that the three main classes of British colonies are now — 1. Crown Colonies. 2. Colonies possessing representative institutions, but not responsible government. 3. Colonies possessing both representative institutions and responsible government. — Ed.

In the other British dependencies, the subordinate government resides in the Crown conjointly with a body of persons in England or a similar body in the dependency; so that there is, in the dominant country or the dependency, a subordinate authority having, for some purposes, powers over the dependency co-ordinate with those which the Crown, as such subordinate authority, also possesses over it.

The subordinate government of the dependency resides in the Crown conjointly with a body of persons in England, in the case of the territories comprised within the charter of the East India Company.* The subordinate government of these territories is exercised by the Crown and its appointees, conjointly with the body of persons forming the East India Company.

The subordinate government of the dependency resides in the Crown conjointly with a body of persons in the dependency, when there exists in the dependency a body chosen by the inhabitants, without whose consent no law can be made by the Crown or its appointees. In dependencies of this class, the subordinate government commonly consists of the Crown with a governor and a legislative council appointed by the Crown, and a house of assembly whose members are chosen by popular election.

Up to the time of the American war, the colonies founded by Englishmen were generally placed under subordinate governments resting upon a completely democratic basis; and England was contented to allow the popular body in the dependency to manage its internal affairs according to their own liking, provided that the dependency submitted to the restraints which England imposed upon its trade for the sake of promoting her own imagined interest. Consequently, the relation between England and her American colonies up to the middle of the last century closely resembled, so far as the management of their internal affairs was concerned, the relation between a Greek mother country and its colony; but the restraints which England imposed upon

*The territorial rights of the East India Company were transferred to the Crown in 1858.—Ed.

the commerce of these colonies were copied from the Spanish system. Since the close of the American war, it has not been the policy of England to vest any portion of the legislative power of the subordinate government of a dependency in a body elected by the inhabitants.* The only exception to this uniform course of policy is furnished by the Canadian provinces, whose subordinate government was partly vested in a house of assembly by an act passed in 1791. The Ionian Isles, whose subordinate government, likewise popular in form, was created in 1817, are formally rather an independent state under the protection of the British crown than a dependency of the United Kingdom.

Before we conclude this outline of the political relations of the English dependencies, it is necessary to remark that their government is materially influenced by the existence of separate departments in the dominant country, charged with the exclusive care of their political affairs.

The early English colonies were in practice nearly independent of the mother country, except as to their external commercial relations; and there was scarcely any interference on the part of England with the ordinary management of their internal affairs. Accordingly, there was at that time no separate department of the English government, charged exclusively with the superintendence of the government of the dependencies; and the business connected with them, being chiefly commercial, was assigned first to a board, and afterward, for a short interval, to a permanent committee of the privy council, which had the management of the affairs of "Trade and the Plantations."

The affairs of the plantations and other dependencies remained in the management of this department until the creation of a permanent third secretary of state, in the year 1794. The third secretary of state had the department of war, to which the management of the colonies

* This passage, written before the grant of responsible government to Canada, Newfoundland, the Australasian colonies, and the Cape, shows what a great change has taken place in the colonial policy of Great Britain during the last fifty years.—Ed.

was annexed. Since the peace of 1815, his department has been styled the Colonial Department; and all the English dependencies, except the Channel islands, with the Isle of Man, and the territories of the East India Company, are under his administration. Although the secretary of state for the Colonial Department is still nominally the minister of war, the military and naval business is transacted by other departments of the government.

The home government of the territory belonging to the East India Company was, until the year 1784, vested exclusively in the proprietors and directors of that body, subject to the legislative power of Parliament. In that year a government department was created by the name of the Board of Control, which was to be appointed by the Crown, and to exercise a supervision over the proceedings of the directing body of the East India Company. Before the establishment of the Board of Control, the Crown, as distinguished from the Parliament, had no authority over the territories belonging to the East India Company; in other words, the Crown had no share in the subordinate government of those territories. It may be observed that, if a department having the special charge of the dependencies, similar to the present Colonial Department, had existed in 1784, Mr. Pitt would probably have proposed to add to its functions the control of the proceedings of the East India directors. The creation of a separate Board of Control for the East India Company in 1784, and the subsequent formation and growth of the Colonial Department, have produced the singular anomaly of two departments in the dominant country superintending separately the governments of different portions of the dependencies.

While England has two public departments charged with the care of its dependencies, in France the management of the dependencies is attached to the ministry of marine, an arrangement which seems less convenient than that formerly existing in this country, by which the concerns of the plantations were annexed to the department of trade.

The ancient states had no public department or even functionary specially charged with the superintendence

and control of the governments of the dependencies, and of the conduct of their respective governors. Such an institution would, however, have scarcely failed to ameliorate the government of the dependencies (whose misgovernment was the principal defect of the ancient systems of polity), and therefore to consolidate the empires of the great states, which, from the unwilling obedience of the subject communities, were always threatening to fall asunder. In Rome, for example, a department or officer of this sort could scarcely have failed to afford some protection to the provincials against the oppressions of their governors, and generally to introduce improvements into the method of their administration. The industry and ability of Cicero would have been employed far more advantageously to the provincials, if he had filled an office of this sort, than they were in his prosecution of Verres. The constant supervision of a public department or officer, however much influenced it might have been by the sinister interests of classes or individuals in Rome, would have been far more efficacious in restraining abuses in the provinces, than the slight motive caused by the fear of an accidental prosecution, vigorously as such a prosecution might have been followed up in an individual case.

In later times, the Roman emperors employed certain agents (styled *agentes in rebus*) to visit the provinces and furnish the supreme government with information respecting their condition. These officers were movable, and were not connected with any separate department in Rome. They appear to have been considered in the odious light of spies and informers; and they are accused of having ruined persons in the remote provinces by false accusations.

The Spanish Council of the Indies was, as has been already remarked, the first example of a separate public department in a dominant country for the management of dependencies. The maxims by which the Council of the Indies guided its policy were most pernicious to the colonies; moreover, its influence probably held those colonies in the strict dependence upon Spain in which

they continued till near the period of their independence, and thus prevented them from taking measures for obtaining a better government. But as the maxims of government which it followed were those obtaining generally in the age and country, they were adopted, not invented, by it; and its influence in maintaining the dependence of the colonies, which proves the efficacy of its organization, was, to a certain extent, counterbalanced by the checks which it imposed upon the excesses of the local authorities. In particular, the Council of the Indies seems to have never authorized the oppressions and cruelties practiced by the Spanish colonists upon the native Indians, but rather to have thrown over them the protection of laws which were not intended to remain a dead letter.

If it be assumed that colonial and other dependencies are to remain in a state of dependence, it cannot be doubted that they, on the whole, derive advantage from the existence of a public department in the dominant country, specially charged with the superintendence of their political concerns. The existence of such a public department tends to diminish the main obstacles to the good government of a dependency, *viz.*, the ignorance and indifference of the dominant country respecting its affairs; and to supply the qualities requisite for its good government, *viz.*, knowledge of its affairs and care for them. If the existence of such a department tends to involve the affairs of the dependency in the party contests of the dominant country, it is to be remembered that this very evil has its good side; inasmuch as the public attention is thereby attracted to the dependency, and the interest of some portion of the dominant people is awakened to the promotion of its welfare.

DELPHICA

## CHAPTER III.

### On the Modes in Which a Dependency may be Acquired.

Having, in the preceding chapter, illustrated the general notion of a dependency by examples of dependencies as they have actually existed, we proceed to a consideration of some properties of a dependency which have not been fully explained in the first chapter.

The first subject which here requires examination is the means by which a dependency may be acquired.

#### § 1. Acquisition by conquest or voluntary cession.

A dependency is sometimes acquired either by conquest, or by an express or tacit cession.

A dependency thus acquired may have been previously either dependent or independent.

Many of the dependencies of the ancient states became dependent by conquest, having previously been in a condition of independence. Such was the case with Egypt, Syria, Lydia, and other countries which were dependent upon the Persian kingdom; such also was the case with the islands of the Ægean Sea and the states of the coast of Asia Minor, which were dependent upon Athens; and such was the case with most of the dependencies of Carthage, in the western parts of the Mediterranean. The provinces of the Roman republic were often acquired by a sort of treaty, to which the people were induced to submit by the fear of the Roman arms. In some cases Rome acquired a dependency by forming with a weaker state an unequal treaty, which, though it left the state nominally independent, deprived it virtually of its independence. Examples of the conquest of dependencies in ancient times are furnished by Sicily and Sardinia, which Rome took from Carthage, and annexed to her own dominions, before she reduced the Carthaginian republic

itself. Examples of the transfer of dependencies from the possession of one state to another occur likewise in Greek history; but the most numerous and best known instances of this sort of transfer have taken place in modern times, when wars have frequently been carried on between European states respecting the possession of dependencies in America or Asia. Several of the dependencies of the European states in North America, and in the East and West Indies, have thus changed masters; and thus, for example, the French colonies of Canada and the Mauritius, the Spanish colonies of Jamaica and Trinidad, and the Dutch colonies of the Cape of Good Hope and Ceylon have passed into the hands of England.

It may be added that a portion of an independent state, not being itself a dependency of that state, but subject directly to its supreme government, may be conquered from it by another independent state, and be formed by that state into a dependency. This is the case with Gibraltar, which was formerly an integral part of the Spanish monarchy, and is now a dependency of England. In like manner, a factory established on the territory of an independent state may, in the progress of time, cease to be dependent on the government of the state by whose permission it was originally established, and may become a dependency of the nation which established it. This was the case with the factories established by the English East India Company on the territory of the Mogul.

### § 2. ACQUISITION BY SETTLEMENT.

A dependency is sometimes wholly or partially formed by emigrants, settlers, or colonists from an independent state, who establish a new community, having a government subordinate to the supreme government of that state. In this case the dominant community is also the metropolis or mother-country, and the dependency is also its colony. The Roman *coloniæ* and the colonies or plantations of Spain, Portugal, France, Holland and England in America, Africa, Asia and Australia, afford examples of this species of dependencies. The Greek and

Phœnician colonies do not, as has been already stated, fall within the class of dependencies.

As modern colonies have generally been dependencies of their respective mother countries, and the terms "colony" and "dependency" have often been confounded in consequence, it will be convenient to examine in this place the signification of the former term.

The English word "colony" is derived ultimately from the Latin word *colonia*, the origin and meaning of which have been already explained. A COLONY properly denotes a body of persons belonging to one country and political community, who, having abandoned that country and community, form a new and separate society, independent* or dependent, in some district which is wholly or nearly uninhabited, or from which they expel the ancient inhabitants.

It is essential to the idea of a colony that the colonists should have formed only a part of the community which they have abandoned for their newly adopted country. If an entire political community changes its country for a time, and moves elsewhere, it does not found a colony: thus a roving tribe of Scythians or Tartars does not found a colony when it settles in the temporary occupation of a new district. So the Athenians, during the Persian invasion of Attica, when they embarked in their ships and took refuge in Salamis, were not a colony. Nor would they have been a colony, even if they had permanently changed their place of abode; for when an entire nation changes its seats, and establishes itself permanently in another country (as the Franks in France, the Lombards in Italy, or the Vandals in Africa), it is not said to found a colony.

It is likewise essential to the idea of a colony, that the colonists should have belonged to a common country. A new community formed of persons collected together from various states (in the manner in which the original body of the Roman citizens is reported to have been formed) would not be a colony of any one of those states. So the city of Thurii, which was formed, a few years

*The United States, therefore, are strictly speaking, within the term "British Colonies."—ED.

before the Peloponnesian war, of settlers from all the principal states of Greece, was not a colony of any of those states.

But in order that a community should be a colony of a certain country, it is not necessary that EVERY member of the colony should have been derived from that country. It is sufficient for this purpose, that the bulk of the colonists or of the governing or free class in the colony should have been inhabitants of such country. Thus, in many of the Greek colonies, the Greek settlers found in the new territory a native population which they reduced to a servile condition, and the Roman colonies were little more than garrisons of Roman soldiers in conquered districts. In like manner, the importation of African slaves into Virginia and Cuba did not prevent Virginia and Cuba from being respectively colonies of England and Spain. On the other hand, a small body of settlers in a new country, mixing with a larger body, is merged in the larger body; and the new community which they jointly formed is considered as a colony of the state whose inhabitants preponderate in it. Thus, in spite of the body of Prussian Protestants who left their own country on religious grounds and settled in South Australia, South Australia is deemed to be an English colony.

Furthermore, a colony may be established in a territory, being either uninhabited or thinly inhabited, as has been the case with the English colonies in North America and Australia. A colony may, likewise, be established in a territory, of which the ancient inhabitants are either expelled or reduced to a state of slavery. Thus the Athenians established a colony in Melos, during the Peloponnesian war, after having slain the adult males and enslaved the rest of the native population. The foundation of a Roman colony was generally preceded by an ejection of the native occupiers and cultivators. The Spanish settlers of America, likewise exterminated or enslaved a large part of the native population.

It is, moreover, essential that the persons who have abandoned their native country should form a SEPARATE

POLITICAL COMMUNITY. Unless persons who abandon their native country form a separate political community, they are not colonists. For example, the French Protestants, who fled from France after the revocation of the edict of Nantes, and took refuge in Germany and England, did not constitute colonies in those countries. The small body of English Puritans, who first sought in Holland an asylum against religious persecution, did not form a colony until they afterward established themselves in New England as a distinct community. Such a community may be politically independent, or it may be dependent on the government of its mother country; but, in order to be a colony, it must be a separate, and consequently a new community.

A colony may be compared to a swarm of bees, which issue from the parent hive in a separate body and form a new hive.

Since a colony, though always a separate, may be either an independent or a dependent community, it is evident that a colony is not necessarily a dependency. It is manifest, on the other hand, that a dependency is not necessarily a colony of the dominant country; or, indeed, of any country.

According, however, to the present acceptation of the term, a colony is considered as nearly equivalent to a dependency.

"The term COLONY," says Mr. Mill, "is sometimes employed in a sense in which the idea of a body of people drawn from the mother country hardly seems to be included. Thus we talk of the British colonies in the East, meaning, by that mode of expression, the East Indies. Yet it can hardly be said, that any body of people is drawn from the mother country to inhabit the East Indies. There is nobody drawn to INHABIT in the proper sense of the word. A small number of persons, such as are sent to hold possession of a conquered country, go; and, in this sense, all the conquered provinces of the ancient Roman Empire, might be called what they never have been called, colonies of Rome.

"In the meaning of the term 'colony,' the predominant idea among the ancient Greeks and Romans appears to

have been that of the PEOPLE; the egress of a body of people to a new and permanent abode. Among the moderns, the predominant idea appears to be that of the TERRITORY, the possession of an outlying territory; and, in a loose way of speaking, almost any outlying possession, if the idea of permanency is united, would receive the name of a colony. If we use the term with so much latitude as to embrace the predominating idea, both of ancients and moderns, we shall say that a colony means an outlying part of the population of the mother country, or an outlying territory belonging to it; either both in conjunction, or any one of the two by itself."

The Ancients never confounded the ideas of "colony," and of "outlying territory," or "dependency." The Greek colonies were independent from the beginning; and, therefore, it was not likely that the Greeks should make this confusion. The Roman *coloniæ* were sometimes little more than garrisons in a conquered territory, and they therefore, might be considered so far analogous to the British possessions in the East Indies.* But the lands of a Roman *colonia* were always divided among the *coloni;* and although the latter might, from time to time, perform certain military services, they were mainly looked upon as cultivators of the soil. In the Roman provinces the soil remained in the hands of the ancient proprietors, and was not divided among Roman citizens. Consequently the Roman provinces were not styled colonies.

The English word "colony" was formerly understood to have a meaning similar to that of the Latin word *colonia.* "COLONY," says Stokes, in his work on the Constitution of the British North American Colonies, published in 1783; "signifies a company of people sent to a remote place to dwell there and cultivate the land." "PLANTATION in the sugar and rice colonies," he proceeds to say, "denotes a piece or tract of land, which is either granted to, or purchased by, a person to cultivate for his

*This is hardly a sound analogy. The British possessions in the East began with trading stations, and the trading stations gradually brought about territorial sovereignty. The English never, like the Romans, first conquered a province and then planted colonies in it simply to hold it as a tributary to the empire.—ED.

own use. But in the northern British colonies, where the produce is similar to that of England, the lands they cultivate are more frequently called FARMS than PLANTATIONS; as they informed me when I was at New York. In a more extended sense, a PLANTATION is a place to which people emigrate, in order to dwell there, with an allowance of land for their tillage, and immunities for the good of themselves, and the metropolis or mother country to which they belong; and in this acceptation, the word PLANTATION is used to denote a British settlement in America. In strict propriety of speech, COLONY denotes the people emigrated, and PLANTATION the place in which they are settled; but these words are often used in a synonymous sense, both in Acts of Parliament, and on other occasions."

Accordingly, any country, forming a separate community, where Englishmen have settled in such numbers as to form the bulk of the population, or of the cultivators or proprietors of the soil, is properly an English colony. In this sense, the New England States, Maryland, Virginia, the Carolinas, Georgia, Upper Canada, Australia, and the English West India islands, would be English colonies. But an English dependency, in which the bulk of the cultivators or proprietors of the soil are not Englishmen, and in which the bulk of the English residents reside there for purposes of government or trade (as Ceylon, the East Indies, Malta, or the Ionian Isles) cannot, in strictness, be called an English colony, although its government may be under the secretary of state for the Colonial Department.

In ordinary language, however, every dependency which is under the secretary of state for the Colonial Department is called a colony. According to this extensive acceptation of the word, not only dependencies settled by English emigrants, as Barbados, Newfoundland, and Sydney, but also dependencies formerly settled by emigrants from other countries, as Trinidad, Ceylon, and Mauritius, and communities once independent, as Malta, are denominated English colonies. The same name is likewise applied, though less frequently, to the territories of the East India Company.

The governments of those English settlements in North America, which were not proprietary or charter governments, were called PROVINCIAL GOVERNMENTS, and the territories themselves were called PROVINCES. Thus, we speak of the province of Canada or of Nova Scotia.* Mr. Haliburton states in his Account of Nova Scotia, that "for some time previous to the revolution in America the popular leaders affected to call the provincial establishments, or king's governments on the continent, COLONIES instead of PROVINCES, from an opinion they had conceived that the word 'province' implied a conquered country." "But," he adds, "whatever distinction there might once have been between the terms PROVINCE, COLONY, and PLANTATION, there seems now to be none whatever, and they are indiscriminately used in several Acts of Parliament."

A doubt may exist whether a dependency acquired by conquest, which is thinly peopled, and in which numerous settlers from the dominant country establish themselves, does not become (in the proper sense of the term COLONY) a colony of the dominant country; provided that the native inhabitants leave the territory, or bear an extremely small proportion to the new settlers from the dominant country. According to Mr. Burge's view, the change just described actually occurred in the case of Jamaica. "The number of Spaniards," he says, "at the time the British took possession of Jamaica, did not exceed fifteen hundred. The only inhabitants who became proprietors, or of whom any mention is made, were the English subjects who resorted thither. The island ceased to be inhabited by the conquered. It was peopled and settled by the subjects of England, under the invitation and encouragement of the proclamation of Charles II."

Whenever I have occasion to use the term COLONY in the course of this Essay, I use it in its proper sense, as defined above in this chapter.

*What were formerly called Upper and Lower Canada are now the provinces of Ontario and Quebec, and Canada is, at the present day, synonymous with the whole of British North America except Newfoundland, the confederation of provinces being styled a Dominion.— ED.

## CHAPTER IV.

### Reasons for Governing a Territory as a Dependency.

As has been shown in the first chapter, a supreme government is not under the necessity of governing a territory as a dependency, unless the communications between the seat of the supreme government and the territory be extremely difficult, and therefore extremely slow. This extreme difficulty, with the necessity to which it leads, is not entirely resolvable into the great distance between the seat of the supreme government and the dependency. The distance, indeed, may be so great, that it may produce the difficulty and necessity to a degrèe altogether insurmountable. But the tendency of the distance to produce the difficulty and the necessity may be countervailed by various causes, of which the following are the principal: 1. A skillful arrangement of the executive machinery of the government, and particularly of the organization of its naval and military forces. 2. The goodness of the roads and bridges, and an advanced state of the art of navigation, affording the means of rapid locomotion both by land and sea. *

The rudeness of the governments, and the imperfection of physical science and the useful arts, rendered it impossible in ancient times to subject large populations and tracts of country to the immediate action of the same government. Accordingly, even in the comparatively civilized communities which were situated around the Mediterranean Sea, the state usually consisted only of a city with a small district attached to it, and all the remaining territory subject to the dominant city was par-

* It will be noted that in this chapter no specific reference is made to railways, steamers, or telegraphs.—Ed.

celled out into dependencies. This (as we have already seen) was the case with the republics of Athens and Sparta, and afterward with those of Carthage and Rome. The greater the proximity of these dependencies to the dominant state, the more complete and lasting was their subjection to it. If their distance from the dominant country was considerable, their obedience was doubtful and intermitting. So great, indeed, was the difficulty of exercising the powers of government at a distance, when the art of navigation was in its infancy, when permanent armies were not kept on foot, and when the means of moving large masses of men were imperfectly understood, that the earliest colonies, namely, those of the Phœnicians and Greeks, were from the beginning independent of the mother country. The non-interference of the Phœnician and Greek states with the government of their colonies did not arise from any enlightened views of policy, and still less from any respect for the rights or interests of a weak community. It must be attributed exclusively (as Heeren has remarked respecting the Phœnician colonies) to the inability of the mother country to exercise a supremacy over a colony divided from it by a long tract of sea. At a somewhat later time, the progress of improvement in the arts, and particularly in the art of war, rendered it possible for Carthage and Rome to maintain their dominion over distant territories by means of a system of subordinate governments.

The causes which led to the creation of dependencies in ancient times among the nations which occupied the countries surrounding the Mediterranean, have always continued in operation among the Oriental nations, and have already produced similar effects. The territories of the great Oriental monarchies have always been (as has been already shown) clusters of dependencies. The saying of Ovid, "*Quis nescit longas regibus esse manus*," is peculiarly inapplicable to the Oriental kings. THEIR arms have always been so short that they have only been able to keep a large territory in subjection by parceling it out among a number of viceroys.

The civilized states of modern times have advanced so far beyond the civilized states of antiquity in a knowledge of the means by which extensive regions can be subjected to the efficient action of the same government, that the system pursued by the Ancients has been completely abandoned by the modern European states. In consequence of the discoveries of modern civilization, far larger tracts of country may be subjected immediately to the supreme government, and far more distant territories may be governed as dependencies, than the Ancients would have conceived possible. Aristotle speaks of a population of a hundred thousand freemen (which would not imply a total population of more than five or six hundred thousand souls) as too large to constitute a single state; but now thirty-five millions of souls are directly subject to the French government, and twenty-four millions of souls to the English. Again, the Phœnicians would have found it impossible to maintain their supremacy over their colony at Carthage, or the Phocæans over their colony of Massilia; but the Spanish, Portuguese, French, Dutch, and English have established and retained colonial dependencies in the most distant quarters of the world, in Africa, Asia, America, and Australia.

But, notwithstanding the facilities for communication afforded by the arts of modern civilization, the point is soon reached, even in the present time, at which it becomes impossible for the most powerful community to govern a territory without interposing a subordinate government between it and the supreme government; thus it would be impossible to render the West India islands or the North American provinces directly subject to the English government.

Since a possibility of rapid communication with the persons to be governed is a necessary condition to the exercise of the powers of government, the modern inventions for accelerating the transport of persons and letters have an important influence in enlarging the circle, within which the powers of a government may be efficiently exercised. They enable the supreme government to subject a larger extent of territory to its

immediate action; they increase the influence of the dominant country over all its dependencies;* and they also enable it to govern more distant territories in that form.

Although territories lying at a considerable distance must be placed under a subordinate government, the facility and regularity of communication with them materially affect the amount of influence exercised by the supreme upon the subordinate government, and the amount of protection which their inhabitants receive from the former against the latter. The extent to which the difficulty of communication diminishes the influence of the supreme over the subordinate government, may be illustrated by an incident which occurred in the colony of New South Wales. In the year 1808, a dispute arose between the governor of New South Wales and some officers of the New South Wales regiment, respecting the trial of a prisoner in which these officers were concerned. In consequence of this dispute, the regiment, having its officers at its head, marched with bayonets fixed, drums beating, and colors flying, to the government house, seized the person of the governor, formally deposed him from the government, and established their own commanding officer as governor in his stead. The commanding officer of the regiment continued to exercise all the powers incidental to the office of governor for nearly two years; at the expiration of which period a new governor, appointed by the crown, arrived from England, and quietly assumed the government.

It may be remarked, that the earliest establishment, in the nature of a post, for the speedy conveyance of letters, appears to have been formed for the purpose of maintaining the influence of the supreme government over the governors of dependencies. "In order," says

*There are counter-balancing disadvantages, for the effect of the telegraph, for instance, must be—

1. to produce a less self-reliant race of governors, because more controlled from home.

2. to bring colonial matters more and more into the sphere of party politics, and, therefore, to make colonial policy more liable to sudden changes.—Ed.

Heeren, "to enable the King of Persia to communicate rapidly with the provinces and their governors, an establishment was created which has been compared, though not quite accurately, with the posts of modern Europe. Couriers were appointed, who were divided according to stages, every stage forming a day's journey; their duty was to convey the instructions of the king to the satraps and the dispatches of the latter to the king. An institution of this kind is so much needed in a despotic empire, where the maintenance of the dependence of the viceroys is one of the most difficult problems, that it occurs in nearly all such states which have had a tolerably well-organized administration. They existed in a similar manner in the Roman empire, and were established in a still more elaborate form in the Mongolian kingdoms, under the immediate successsors of Gengis Khan."

In rude times, and in imperfectly civilized communities, we perpetually find the subordinate governors of the more distant dependencies throwing off their allegiance to the supreme government, and attempting often with success, to establish their independence. The improved administrative machinery of modern governments, the better organization of their naval and military forces, and their means of communicating rapidly with their distant dependencies, have so countervailed the tendency of distance that no governor of such a dependency would attempt or think it possible to render himself independent.

It may, lastly, be remarked, that as the difficulty of communicating between the seat of the supreme government and the dependency is the cause which renders it necessary for the supreme government to govern it in that form, the insulation of a territory, unless productive of this difficulty, does not create the necessity of placing it under a subordinate government. Whenever a territory is sufficiently near to be within reach of the direct action of the supreme government, it may, although it should be detached from the territory in which the seat of the supreme government is placed, be governed with-

out the interposition of a subordinate government; for example, the Rhenish provinces of Bavaria and Prussia are immediately subject to the supreme governments of those two kingdoms, although they are separated from them by intervening portions of territory belonging to other independent states.

## CHAPTER V.

### Separateness of a Dependency, as Arising from the Peculiarities of Its Legal System.

It has been shown in the first chapter that, in consequence of the complete organization of the government by which they are immediately governed, the inhabitants of a dependency form a community which is essentially as separate from the dominant country as is consistent with their subjection to the supreme government. But besides the necessary cause which thus separates a dependency from the dominant country, there are other causes which frequently, though accidentally, tend to the same effect. The peculiarities by which the body of law appropriate to the dependency is distinguished from that of the dominant country, are the most important cause of this description.

It follows from the remarks in the first chapter that the supreme government rarely legislates for a dependency, excepting as to its relations with the dominant country, with the other dependencies of that country, or with foreign states. The same is likewise true of that portion of the subordinate government which consists of persons resident in the dominant country. Consequently most of the newly enacted laws of a dependency emanate from the local subordinate government; and thus its legal system naturally acquires, to a considerable extent, a peculiar character.

Even where the dependency is a colony of the dominant country, the founders of which brought with them the laws and institutions of the parent state, its legal system is peculiar. For, in the first place, such laws and institutions of the mother country as are suitable to a colony, are alone considered as being in force in it. Such, at least, is the rule of the English law; and a similar rule must, from the necessity of the case, obtain with

respect to the colonial dependencies of every country. "It hath been held," says Blackstone, "that if an uninhabited country be discovered and planted by English subjects, all the English laws then in being, which are the birthright of every subject, are immediately there in force. But this must be understood with very many and very great restrictions. Such colonists carry with them only so much of the English law as is applicable to their own situation and the condition of an infant colony; such, for instance, as the general rules of inheritance and of protection from personal injuries. The artificial refinements and distinctions incident to the property of a great and commercial people, the laws of police and revenue (such especially as are enforced by penalties), the mode of maintenance for the established clergy, the jurisdiction of spiritual courts, and a multitude of other provisions, are neither necessary nor convenient for them, and therefore are not in force."

The following is Mr. West's opinion on this subject, given to the Lords Commissioners of Trade and Plantations in 1720: "The common law of England is the common law of the plantations, and all statutes IN AFFIRMANCE OF THE COMMON LAW, passed in England antecedent to the settlement of any colony, are in force in that colony, unless there is some private act to the contrary; though no statutes made since those settlements are there in force, unless the colonies are particularly mentioned. Let an Englishman go where he will, he carries as much of law and liberty with him as the nature of things will bear."

Lord Mansfield expressed himself as follows, in the case of Campbell *v.* Hall: "It is absurd that in the colonies they should carry all the laws of England with them. They carry such only as are applicable to their situation. I remember it has been determined in the council. There was a question whether the statute of charitable uses operated on the Island of Nevis. It was determined it did not; and no laws but such as were applicable to their condition, unless expressly enacted."

Acts of Parliament made after the foundation of an English colony do not extend to it, unless, $1^0$, they name that colony in particular or the colonies generally; or $2^0$,

have been adopted by an Act of the colonial legislature; or 3°, have been received and acted upon in the colony.

According to the opinion of the attorney-general of Jamaica, British statutes amending the common law apply to a colony where the English common law is in force, even when they do not name the colony. This rule, however, is so vague that it seems scarcely to admit of being applied. It may be observed that, although the English criminal law (both statute and common law) was introduced into Canada in 1774, the statutes amending the criminal law, which were passed subseqently to that year, were not considered as being in force in it.

The following is the account of the English law in force in Dominica, which was given by the chief justice of the island to the West Indian commissioners:—

"The common law, as far as applicable to circumstances and colonial situation, is generally followed. The acts of the mother country, antecedent to the COLONIAL ESTABLISHMENT, COMPRISING THE COMMON LAW, are in force also. MANY English statutes are adopted and deemed in operation which passed before the cession of the island, and all statutes of England which affect us locally." The attorney-general of the same island stated to the commissioners his opinion, that "the rule upon this subject [*viz.*, the communication of English law to the colonies] is so vague and so little understood, that decisions founded upon it will be often contradictory."

The attorney-general of St. Christopher's stated his opinion on this subject to the West Indian commissioners in the following terms: "We consider the law of England operative here, in cases applicable to our circumstances, EXCEPT WHERE IT MAY BE MODIFIED OR ALTERED BY THE ACTS OF THE COLONIAL LEGISLATURE. We also consider acts of the Parliament, passed previous to the cession of the island to Queen Anne by the treaty of Utrecht, operative here in all cases in which they are applicable."

The following is the account of the English laws affecting the island of Barbados, which is given in the Report of the West Indian Commissioners: "The laws in force here are, first, the common law of England;

secondly, such acts of Parliament as were passed before the settlement of the island, and are applicable to its condition. The bankrupt and poor laws, the laws of police, tithes, and the mortmain acts have been treated as not applicable to the condition of the colony, and are, therefore, not in force in it. Of acts passed subsequently to its settlement, such only are considered to affect the colony as have the island expressly named or virtually included in them."

The most complete attempt of the government of an English colonial dependency to determine how much of the law of England applies to it, is exhibited in an Act of the Bahama Islands, passed in the fortieth year of George III., entitled "An Act to declare how much of the laws of England are practicable in the Bahama Islands, and ought to be in force within the same." As Mr. Clark remarks, "it gives a full and clear account of what part of the law of the mother country shall be deemed to be of force and binding in the colony, instead of leaving it to the varying discretion of the judges from time to time, as is the case in many of the other colonies."

The Act, after reciting that, "the common law of England is the best birthright of Englishmen and of their descendants, but nevertheless is not in all respects applicable to the circumstances and condition of new and distant colonies; and that doubts have arisen how far the acts of Parliament in which his Majesty's colonies and plantations in America are not expressly mentioned or included under general words, do extend to those colonies and plantations; by reason whereof his Majesty's liege subjects of these islands have sometimes been in danger of being deprived of the benefit of many good and wholesome laws; and that it is expedient that all doubt be taken away concerning a subject of such high importance"; declares, "that the common law of England, in all cases where the same hath not been altered by any of the acts or statutes hereinafter enumerated, or by any act or acts of the assembly of these islands (except so much thereof as hath relation to the ancient feudal tenures, to outlawries in civil suits, to the wager of law

or of battail, appeals of felony, writs of attaint, and ecclesiastical matters) is, and of right ought to be, in full force within these islands, as the same now is in that part of Great Britain called England." Section 2 enacts, that "the several statutes and acts of Parliament hereinafter particularly enumerated and mentioned, are, and of right ought to be, in full force and virtue within and throughout this colony, as the same would be if the Bahama Islands were therein expressly named, or as if the aforesaid acts and statutes had been made and enacted by the general assembly of these islands." The titles of a large number of English statutes are then enumerated, beginning with 9 Hen. III. and ending with 20 Geo. II.

Section 3 declares, that "all and every the acts, statutes, and parts of acts and statutes of the Parliament of England or Great Britain, which relate to the prerogatives of the Crown, or to the allegiance of the people, also such as require certain oaths (commonly called the state oaths) and tests to be taken or subscribed by the people of Great Britain, also such as declare the rights, liberties, and privileges of the subject, are, and of right ought to be, of full force and virtue within this colony, as the same would be if the Bahama Islands were therein expressly named, or as if the aforesaid acts and statutes had been made and enacted by the general assembly of these islands."

The following is the account given by Mr. Haliburton of the legal system of Nova Scotia:—

"Upon the first settlement of this country, as there was no established system of jurisprudence, until a local one was legally constituted, the emigrants naturally continued subject and entitled to the benefit of all such laws of the parent country as were applicable to their new situation. As their allegiance continued, and traveled along with them according to those laws, their corelative right of protection necessarily accompanied them. The common law, composed of long established customs, originating beyond what is technically called the memory of man, gradually crept into use as occasion and necessity dictated. The statute law, consisting of acts regularly

made and enacted by constituted authority, has increased as the nation has become more refined, and its relationship more intricate. As both these laws grew up with the local circumstances of the times, so it cannot be supposed that either of them, in every respect, ought to be in force in a new settled country; because crimes that are the occasion of penalties, especially those arising out of political, instead of natural and moral relationship, are not equally crimes in every situation. Of the two, the common law is much more likely to apply to an infant colony, because it is coeval with the earliest periods of the English history, and is mainly grounded on general moral principles, which are very similar in every situation and in every country. The common law of England, including those statutes which are in affirmance of it, contains all the fundamental principles of the British Constitution, and is calculated to secure the most essential rights and liberties of the subject. It has, therefore, been considered by the highest jurisdictions in the parent country, and by the legislatures of every colony, to be the prevailing law in all cases not expressly altered by statute, or by an old local usage of the colonists similarly situated; for there is a colonial common law, common to a number of colonies, as there is a customary common law, common to all the realm of England. With such exceptions, not only the civil but the penal part of it, as well as the rules of administering justice and expounding laws, have been considered as binding in Nova Scotia. In many instances, to avoid question, colonial statutes and rules of court have been made expressly adopting them. Since the artifical refinements and distinctions incidental to the property of the mother country, the laws of police and revenue, such especially as are enforced by penalty, the modes of maintenance for the clergy, the jurisdiction of the spiritual courts, and a multitude of other provisions, are neither necessary nor convenient for such a colony, they therefore are not in force here.»

A native customary law common to several dependencies (such as that here referred to by Mr. Haliburton) is not peculiar to the North American settlements. Its existence

is also mentioned in some of the West Indian islands, by the West Indian Commissioners:

«The law of slavery is to be found in a sort of common law of the colonies, and in the acts of the local legislatures. The Chief Justice of Grenada calls it 'a customary law, superadded to the law of England, supplemental to the common law.' In this island (Barbados), and I believe in all others, it was not expressly instituted or established by positive law, but obtained insensibly, and at present depends upon certain unwritten maxims and principles (derived chiefly from the civil law), and a usage founded thereon. This, though not strictly a legal prescription, has been a uniform practice, recognized in the earliest acts of assembly, regulated at various periods of their history, and constantly admitted as legal in their courts of justice.»

It may be remarked generally of the preceding rules respecting the applicability of the law of England in its colonial and other dependencies, that they are vague and ill defined; that, consequently, they leave a large discretion to the courts of the dependency, and even throw a doubt upon the extent of the legislative power possessed by its subordinate government.

Mr. Howard, in his work on the laws of the British colonies in the West Indies, and other parts of America, has the following remarks on the subject: «It is clear that the English laws are partially in force in many of our American possessions; but it is equally clear, that for want of certain admitted principles, upon which the applicability of those laws can be established, it is very difficult to define which of them do, and which do not extend to the colonies respectively; and that, on the contrary, the greatest difference of opinion exists on the subject both at home and in the colonies.»

The following passages, relating to the same subject, occur in the third report of the Commissioners for inquiring into the administration of justice in the West Indies:

«The subject first engaging the attention of the Commissioners in every island was the received law of the colony. This was a point which could hardly be expected to present much intricacy, or to lead to great difference

of opinion. But unfortunately the principle upon which certain laws of the mother country are operative and held binding in her colonies, far from being clear and precise, as is desirable in presenting rules of action which all men are required to obey, is involved in considerable obscurity, and often found very difficult of application.»

«The answer generally received in the case of free persons, was,

«1st. We acknowledge the common law of England;» but always qualified by «so far as it is applicable to the circumstances of the colony.» . . .

2nd. It was said, we are bound by Acts of Parliament passed before the «settlement of the colony,» and «applicable to its condition;» that is to say, by the statutes of England passed antecedently (making, as will be perceived by the subjoined table, a difference in some cases of two centuries):

| | | |
|---|---|---|
| In Barbados — | to 1627, | but not «by the penal laws generally,» said the Solicitor-general. |
| In Tobago | to 1814. | |
| In Grenada | to 1763. | |
| In St. Vincent | to 1763. | |
| In Dominica | to 1763. | |
| In Antigua | to 1632, | but not «by the penal laws, at least in the case of slaves,» thought the Attorney-general. |
| In Montserrat | to 1632. | |
| In Nevis | to 1625. | |
| In St. Christopher | to 1713. | |
| In Tortola | to 1774. | |

«The crown officer of Nevis said, 'we are bound by all Acts of Parliament of the mother country, antecedent to a certain period,' but WHAT that 'certain period' is, does not appear to have been settled by any judicial decision or record here.'»

In consequence of the rule of English law, that a colony founded by Englishmen receives such of the statute and common law in force at the time of its foundation as is applicable to its condition, but does not receive such statutes passed subsequently to its foundation, as do not expressly include it, or such rules of common law as are contained in decisions made after

the same period, it necessarily happens that different portions of the statute and common law are in force in English colonies founded at different times; and that most of the alterations made in the statute and common law of the mother country subsequently to the foundation of a colony, do not extend to it.

The reason assigned for the rule that new colonists take out with them the existing law of England, so far as it is applicable to their condition, is, that the law of England is the birthright of every Englishman. This reason, however, as so stated, is too extensive; for an Englishman going to an English dependency, which is not an English colony, does not necessarily live under the English law. There is no system of PERSONAL LAW in the dependencies of England, such as existed in western Europe soon after the conquests of the German barbarians, and as now exists in Hindostan. The true reason for this rule seems to be, that new colonists take out with them the law of the mother country, from the necessity of the case. It is necessary for them to have some system of law, regularly administered, if they are to be a civilized community; and what other system of law could they adopt? They could not create off-hand a new body of law; and there are no persons among them who are acquainted with any foreign system of jurisprudence, so as to be able to administer it. Moreover, the system of law under which they have hitherto lived, to which they have been accustomed, and which is expressed in their native language, is, on the whole, the best suited to their wants, however different the circumstances of the colony may be from those of the mother country. It may be remarked, that this reason does not apply to dependencies acquired by cession or conquest, which already possess a legal system of their own; and accordingly the body of the English law does not obtain in dependencies so acquired.

Another cause of the peculiarity of the legal system of a dependency is, that the peculiar interests of the dependency, growing out of its peculiar circumstances, necessitate the enactment of peculiar laws. For example, the employment of New South Wales and Van Diemen's

Land, as places of punishment for transported convicts, has necessitated the establishment, in those colonies, of laws altogether different from any of the laws of the mother country.* In like manner, the system of slavery which prevailed in the Spanish, French, Dutch and English colonies of America, caused a set of legal rules different from any obtaining in the legal systems of the respective mother countries to be introduced into those colonies.

The laws which are peculiar to a dependency are sometimes, though rarely, introduced into it by the direct legislation of the supreme government. More frequently, however, they are introduced into it by the legislation of the local subordinate government, or grow up as rules of unwritten law, through the indirect legislation of the local courts.

If a territory belonging to an independent state, or being itself independent, is acquired by cession or conquest, the system of law which obtains in it at the time of the acquisition, can hardly fail to be considerably different from that of the dominant country which acquires it. In general, a country thus acquiring a dependency is satisfied with reorganizing its local government, and modifying its public law, and is contented to leave its civil law (or *jus privatum*) unchanged. By this mode of proceeding the dominant country secures its own dominion, and avoids the production of the confusion which must inevitably ensue in any community upon a sudden change of its law of property and contracts. Thus, as we have already seen, the Roman *municipia* and provinces retained for a time much of their peculiar laws and institutions under the dominion of Rome. In like manner, every country conquered by or ceded to the Crown of England retains such laws and rules of law (not inconsistent with the general law of England affecting dependencies) as were in force in it at the time of the conquest or cession, until they are repealed by a competent authority. Now, inasmuch as many independent states, and many dependent colonies of other states, have become English dependencies; many of the English dependencies have retained wholly, or in part, foreign systems of

* These laws have of course died out with the abolition of transportation.—Ed.

jurisprudence. Thus Trinidad retains much of the Spanish law; Demerara, the Cape of Good Hope, and Ceylon, retain much of the Dutch law; Lower Canada retains the French civil law according to the *coutume de Paris;* St. Lucie retains the old French law as it existed when the island last belonged to France; Mauritius retains such of the French codes as were extended to it; Malta, which was a municipality of the kingdom of Sicily, retains the old Sicilian law as modified by the subsequent legislation of the grand masters; the Ionian islands retain much of their old Venetian law; and the dominions of the East India Company retain much of the Hindoo, Mahometan, and other native systems of law and legal usages. Blackstone properly remarks, that the common law of England does not obtain as such, in an English dependency acquired by conquest or treaty.

It has been remarked above that the rule of English law respecting the communication of the statute and common law of the mother country to an English colony produces two singular consequences: first, that different portions of the statute and common law of the mother country are in force in different colonies; and secondly, that most of the alterations in the statute and common law of the mother country, which have been made since the foundation of the colony, are not received in the colony. An analogous effect is produced by the rule of the English law respecting the retention of the native law of a dependency acquired by England, in cases in which the dependency has been the dependent colony of another state. In these cases, the laws of the mother country, as they existed at the time of the transfer of the colony, are in force in such colony, without any of the alterations which may have been made subsequently to the transfer. Thus the province of Lower Canada has for its civil law the French law, according to the *coutume de Paris;* although that law has long since been superseded in France by the laws of the revolution and the codes of Napoleon. In like manner, the Dutch colonies ceded to England are subject to the Dutch law, as it existed at the time of the cession. "The ancient law of Holland," says

Mr. Henry, in his preface to his translation of Vanderlinden's "Institutes of the Laws of Holland," "as it existed before the subjugation of that country to France and the introduction of the code Napoleon, still prevails in the Dutch ceded colonies, which never admitted the new code, from the circumstance of their being, during the war which preceded the short peace of Amiens and the treaty of Paris, under the dominion, by conquest, of Great Britain." So, again, the French codes, which are in force in the island of Mauritius, are received in the form in which they were introduced into the island, and without the modifications which have subsequently been made in them by the French legislature.

The present seems a convenient place for considering the extent to which the legislative power of the subordinate government of an English dependency is restrained by the laws imposed on the dependency by the supreme government.

It has been already stated, that a subordinate government can make any law consistent with, but cannot make any law derogating from, the laws emanating directly from the supreme government which bind the dependency. It is, therefore, necessary to consider what, according to the English practice, are the laws of the supreme government which bind a dependency.

In an English dependency which has been colonized by Englishmen, the laws of the mother country are in force so far as they suit the condition of the colony; and an English dependency acquired by treaty or conquest retains generally the laws which it possessed at the time of the acquisition. But the laws just mentioned are not considered as being among the laws of the supreme government, which the subordinate government cannot alter; probably because they are considered to have been established directly by the express or tacit authority of the immediate government of the dependency, although they were so established with the tacit consent of the supreme government.

The laws of the supreme government which, according to the English practice, the subordinate government is unable to alter, are the written laws of the supreme

goverment which apply specifically to the dependency, and were, therefore, passed at the time of, or subsequently to, its colonization or acquisition; or they are the written laws of the supreme government, passed before or after its colonization or acquisition, which apply to the dependency by a general description. For example, the legislature of Upper or Lower Canada could not make any law inconsistent with any provision of the Act of 1791, respecting the powers of the Houses of Assembly, the clergy reserves, and so forth; nor can an English dependency escape from the operation of the Navigation Acts, although it might have been founded subsequently to the passing of these Acts, which, therefore, would only include it by a general description. It is supposed, moreover, that there are certain fundamental principles of the unwritten law of England (although it is not pretended that they are very precisely defined), to which every law or legal rule of a dependency must conform, and which, therefore, the subordinate government is unable to alter. Assuming that there are such fundamental principles in force in every English dependency, we must suppose that the supreme government directly though tacitly introduced them.

It sometimes happens that a large body of law is introduced into a dependency by a legislative act of the supreme government. Thus, the criminal law of England was introduced into Lower Canada by Act of Parliament, in 1774. It appears that the criminal law so introduced has undergone some modifications by the provincial legislature, but that the power of the provincial legislature to make these changes has been disputed. Whether the legislature of Lower Canada had or had not the power to alter the English criminal law as introduced into that province by Act of Parliament, it is certainly desirable that, whenever a large body of law is introduced into a dependency by the supreme government, a power of modifying its provisions should be expressly given to the subordinate government, so far as it concerns the internal affairs of the dependency, and does not affect its political relations with the dominant state.

It is probable that the practice which prevailed

respecting the dependencies of Rome closely resembled that which prevails respecting the dependencies of England. Probably, the local government of a *municipium* or *colonia* could alter any of its laws, unless it was restrained by a positive enactment of the Roman legislature, and a provincial government could make any legislative innovation which was not inconsistent with the formula of the province, or any Roman law binding the provinces generally.

It has been shown in the first chapter, that a dependency is characterized by its possessing a completely organized though subordinate government; and that it is necessarily as distinct from the dominant community in this respect, as is consistent with their being both members of the same independent political society.

The separateness of the dependency is increased by the peculiarities of its legal system, the general though accidental causes of which have been explained in the present chapter.

Having a peculiar government completely organized, and a peculiar legal system, it has a distinct history and distinct historical associations; it has recollections and feelings which extend to all its members, and are limited to them. It thus obtains a peculiar national character and a separate national existence.

Hence the inhabitants of a dependency are different from an equal number of persons not forming a separate community, but living in the midst of the population of an independent state. Every measure of the government of a dependency affects the inhabitants of the dependency, and them alone; whereas a portion of the members of an independent community (such as the inhabitants of a county or department) are, in general, affected by the measures of its government, not exclusively, but in common with all the other members of that community.

It is well known how great an interest attaches to the history of the small Greek and Italian states, because they were separate communities. However small or weak a separate community may be, its history can scarcely fail to present some features of interest. The interest will, doubtless, be greater if the community be independent than if it be dependent; but there can scarcely fail to be some interest, provided it be a separate community.

## CHAPTER VI.

### Advantages Derived by the Dominant Country from Its Supremacy Over a Dependency.

Having in the preceding chapters attempted to explain and illustrate the nature of a dependency, I proceed, in this and the following chapters, to examine the advantages and disadvantages which arise severally to the dominant community and the dependency, from their political connection with each other.

We will consider in the present chapter the advantages which the dominant community may derive from its supremacy over a dependency.

These advantages are various, and are determined by the natural capabilities of the dependency, the character of its population, the policy adopted with regard to it by the dominant country, and other causes. It cannot, therefore, be stated absolutely that the dominant country derives any advantage or advantages from its political relations with a dependency.

The following appear to be the principal advantages which dominant states have derived, or attempted to derive, from the possession of dependencies:

1. By the civilized states of antiquity, dependencies were chiefly valued as furnishing a revenue to the government of the dominant country. The subject allies of Athens all rendered a tribute to the dominant republic, either in money or military and naval supplies; the amount of their contributions underwent several changes, and the fixing of it on such terms as should not produce dissatisfaction among the allies was considered nearly the greatest feat of Athenian statesmanship. The subject allies of Carthage were likewise tributary. We have already stated that the arbitrary increase and vexatious collection of their tribute at the

end of the first Punic war led to the dangerous rebellion against Carthage which is called the war of the mercenaries. The Roman provinces also yielded a large revenue to the supreme government, from taxes which were either collected by Roman officers or farmed out by the government to contractors.

The dependencies of the Oriental monarchies have also paid a tribute to the monarch after defraying the expenses of their own subordinate governments. This, as we have already seen, was the case with the ancient Persian Empire, and still continues to be the practice of the Asiatic governments.

The states of modern Europe have not in general derived any direct tribute or revenue from their dependencies. Most of the dependencies of modern European states have been colonies founded by their own citizens, which, during their infancy, have needed pecuniary assistance from the government of the mother country, instead of being able to contribute to its expenses; and which, when grown to maturity, were considered beneficial to the dominant mother country rather as affording to its citizens the means of commercial profit than as furnishing a direct revenue to its government.

The crown of Spain levied a tax of a certain portion of the gross produce of the gold and silver mines in its American colonies. But this tax, however it may have dazzled men's imaginations at a time when all wealth was supposed to consist in the precious metals, was not sufficiently productive to form an important resource of the Spanish monarchy. The colonial government of Spain was an expensive government,* and the American colonies did not yield any great surplus revenue to the mother country. The principal advantage which Spain expected to derive from her colonies consisted, as we shall show presently, in appropriating to herself the

*«The colony government of all these three nations (Spain, Portugal, and France) is conducted upon a much more expensive plan, and is accompanied with a much more expensive ceremonial (than the colony government of England). The sums spent upon the reception of a new viceroy of Peru, for example, have frequently been enormous.»— Pt. II. Adam Smith's «Essay on Colonies.» (This volume.) —Ed.

monopoly of their commerce. The colonies of France and Holland were in like manner chiefly prized as opening new fields of commercial enterprise, and no considerable revenue was ever extracted from them for the benefit of the mother country.

The English colonies have not in general been founded under the guidance or direction of the government. They have either been established by political and religious refugees, who sought in distant countries an asylum against the oppression of their own government, or by bodies of mercantile adventurers who attempted to better their fortunes by becoming planters in a virgin soil. The general policy of England has been, not to compel her dependencies to contribute to defraying the expenses of the general government.* The only exception to this policy is the remarkable one of the North American colonies. During the infancy of the Anglo-American colonies no attempt was made by the mother country to tax them for the general purposes of the empire; because, although they were too weak to resist, they were too poor to pay. Afterward, when they had grown into large and flourishing communities, they were required by the supreme government to contribute to its expenses; but it was found that, while they had acquired the means of payment, they had also acquired the power and disposition to resist.

The unfortunate war between Great Britain and her American colonies, which her attempt to tax them for the benefit of the general government produced, and the irrational obstinacy with which that war was continued after the firm determination of the colonists not to submit to the taxation had been clearly shown, generally prevent us at present from doing justice to the grounds upon which the claim of the mother country was originally made. These grounds were anything but unreasonable. It was said that the benefit which the Anglo-

* «The English colonists have never yet contributed anything toward the defense of the mother country, or toward the support of its civil government. They themselves, on the contrary, have hitherto been defended almost entirely at the expense of the mother country.»—Pt. II., Adam Smith's «Essay on Colonies.» [This volume.—Ed.]

American colonies had derived from the wars in which England had been engaged since the Revolution rendered it fair that they should contribute toward the expense of defraying the interest of the debts which those wars had necessitated. Some of these wars, it was added, had been carried on to a great extent for the defense of the American colonies. It was therefore contended, that the dominant country might justly levy in her American dependencies a tax of which the produce should be applied to defraying the expenses of the general government.

It can scarcely be denied that this reasoning is substantially correct, and that the Anglo-American colonies might, without sacrificing any useful principle of government, have consented to contribute a moderate sum toward the expenses of the general government of the empire.

But there were many reasons why the Anglo-Americans were naturally not inclined to take this view of the demand made upon them by the English government. In the first place, a dependency is (as we have already shown) a separate community; and the members of it are accustomed to look upon the subordinate government as that which is peculiarly their own. The subordinate government keeps a separate account of its revenue and expenditure, and the people of the dependency are therefore likely to acquire a habit of thinking that no tax ought to be paid by them except for defraying an expense of the subordinate government. Moreover, the natives of a dependency are accustomed to regard the supreme government as something in which they have scarcely any concern, which lies beyond their sphere, and to the prizes and emoluments of which the members of their little community cannot aspire. The loss sustained by the dominant country in defending them during war is, in their opinion, amply compensated by the advantages which (according to her own avowed principles)* she derives from regulating their external commerce. In addition to these general considerations, there were the following

* It is needless to say that these principles are now absolutely disavowed by Great Britain.— Ed.

peculiarities in the case of the North American colonies: 1. Since the foundation of these colonies, the mother country had not interfered systematically with their internal affairs; and with the exception of their external commercial relations, they had been allowed to enjoy practical independence. 2. They had not been required at any time since their foundation to contribute anything to the expenses of the supreme government; and there is scarcely any habit which it is so difficult for a government to overcome in a people as a habit of not paying.* 3. The tax was imposed by Act of Parliament, and was attempted to be levied by officers of the supreme government. The objection to the impost would probably have been less if the colonial governments had been required to pay a certain sum annually to the supreme government, and if the determination of the mode of raising the revenue and the duty of collecting it had been intrusted to them.

In consequence of the resistance of the North American colonies to taxation by England, an act of Parliament was passed in 1778, declaring that the King and Parliament of Great Britain would not from thenceforth impose any duty, tax, or assessment payable in any of the King's colonies, provinces, or plantations in North America or the West Indies, except only such duties as it might be expedient to impose for the regulation of commerce, and that the net produce of such duties should always be applied to the use of the colony in which it might be levied, in the same manner as other duties collected by the authority of the general assembly of the colony (18 Geo. III. c. 12). Although this declaration was nothing more than a signification of the opinion of the Parliament then assembled, and is not binding upon any succeeding Parliament, yet it is not probable that the supreme government of England will again attempt to derive a revenue from any English dependency.

Adam Smith seems to be of opinion that no dependency

* One main cause of the disastrous Boer war of 1880–1, which ended in the retrocession of the Transvaal, is generally thought to have been the regular collection of taxes insisted on by the British authorities. — Ed.

ought to be retained, unless it contributes toward the expenses which it may occasion to the dominant country. Speaking of the expenses which Great Britain incurred on account of her North American colonies, he says: "It was because the colonies were supposed to be provinces of the British Empire that this expense was laid out upon them. But countries which contribute neither revenue nor military force toward the support of the empire cannot be considered as provinces. They may perhaps be considered as appendages, as a sort of splendid and showy equipage of the empire. . . . If any of the provinces of the British Empire cannot be made to contribute toward the support of the whole empire, it is surely time that Great Britain should free herself from the expense of defending those provinces in time of war, and of supporting any part of their civil or military establishments in time of peace."

It cannot, however, be laid down generally, that a dependency is of no value to the dominant country unless it contributes directly to the support of the imperial government. Some of the advantages which will be enumerated in the present chapter may be sufficient to outweigh the disadvantages arising from the expense occasioned to the dominant country by the possession of the dependency. It is nevertheless certain, that the expense caused to the dominant country by the possession of a dependency contributing nothing to the support of the supreme government, is a constant evil which nothing but unquestionable advantages can compensate.

The notion of deriving a tribute from dependencies, or even of making them defray all the expenses incurred by the supreme government on their account, is now generally abandoned;* and, according to the modern view of the relations of a dominant state and a dependency, the advantages which the former derives from the latter ought to be confined to indirect advantages of trade, emigration, and other matters which will be stated pres-

* The idea of making the British dependencies defray the expenses incurred by the supreme government on their account, so far from being abandoned, is very much more strongly held in this country than it used to be.—Ed.

ently. This view of the relations of a dominant state and a dependency prevails in all the European states which possess dependencies for commercial purposes in the other three quarters of the world. The government of Austria is supposed to derive from its dependency of Lombardy a revenue which it applies to the general purposes of the empire.

2. Another advantage accruing to the dominant state from its supremacy over a dependency is, that the latter may furnish men for the army and navy of the former. The great Persian army which invaded Greece was, as we know from the description in Herodotus, chiefly composed of bodies of men furnished by the several countries dependent on the Persian monarchy. The Grecian states made no considerable use of their subject allies for this purpose. After the citizens had ceased to serve in war, the armies of the Greek states were chiefly composed of mercenaries. The Roman legions in early times consisted only of citizens; but by degrees the practice of recruiting in the provinces obtained, and under the emperors they were formed almost exclusively of provincials. The commercial dependencies of the modern European states have in general had so scanty a population, and been situated at so great a distance from the dominant country, that the latter have not been able to draw supplies of men from them for their armies and navies. With the exception of Hindostan, the English dependencies have not in general been able to furnish men for their own defense, even where there was no doubt as to their fidelity to the dominant country. But whenever a state possesses a dependency which is fully peopled and at no great distance, it can draw upon it for this purpose. Thus Napoleon derived large supplies of men for his gigantic armies from the countries which he had made virtually dependent upon the French empire.

A dependency may also be used by the dominant state as a military or naval station. We have seen above that the Roman colonies, in the early times of the republic, were substantially garrisons in countries not yet reduced to habits of obedience, and were considered as the

advanced posts of the conquering Roman people. The Carthaginians seem likewise to have partly used their foreign establishments for military purposes. The colonial and other foreign possessions of modern states have been rather disadvantageous than beneficial in a military point of view. They have furnished incentives to war, and, from their distance and extent, have been both difficult and expensive to defend. The dependencies of England in the Mediterranean — Gibraltar, Malta, and the Ionian Isles — must, however, be considered mainly useful to England as military and naval stations.

It may further be argued that the possession of dependencies increases the foreign trade and shipping of the dominant country, and that whatever increases the mercantile navy of a country, also augments its resources and facilities for naval warfare. This effect is doubtless produced in so far as the possession of dependencies tends to increase the foreign trade of a country. The extent to which the possession of dependencies tends to produce the latter effect, will be considered in the following remarks.

3. Another advantage which a dominant community may derive from its supremacy over a dependency consists in the trade which she may carry on with it, under circumstances more favorable to her traders than if the dependency were an independent state.

Among the Ancients, dependencies were chiefly considered as valuable on account of the revenue which they yielded directly in the shape of tribute or military supplies, to the government of the dominant country. The Phœnicians and Carthaginians founded some foreign settlements in order to serve as factories; but these establishments were intended rather to be places of refuge for trading vessels than to secure any profit to the mother country by opening new markets for its productions.

The idea of making dependencies profitable to the dominant country, by securing to the latter an advantageous trade with the former, is of comparatively modern growth. The ancient system of deriving a tribute from dependencies having been abandoned, the states of modern Europe which had colonial or other dependencies,

thought that they could extract a large annual profit from them by subjecting their trade to a rigorous monopoly. For this purpose they excluded from the dependency all ships except those of the dominant country; and they prohibited the ships of the dependency from trading with any part of the world except the dominant country.

"The conquest of America," says Raynal, in his "History of the Settlements of the Europeans in the East and West Indies," "gave the first idea of a new kind of settlement, the basis of which is agriculture. The governments that founded those colonies chose that such of their subjects as they sent thither should not have it in their power to consume anything but what they drew from the mother country, or to sell the produce of their lands to any other state. This double obligation has appeared to all nations to be consonant to the law of nature, independent of all conventions, and self-evident. They have not looked upon an exclusive intercourse with their own colonies as an immoderate compensation for the expenses of settling and preserving them. This has constantly been the system of Europe relative to America."

No European nation carried its colonial monopoly so far as Spain, or enforced it with so much rigor. The maxims, however, by which England regulated her intercourse with her colonial dependencies were scarcely more enlightened. "The leading principle of colonization in all the maritime states of Europe (Great Britain among the rest) was," says Bryan Edwards in his "History of the West Indies," "commercial monopoly. The word MONOPOLY in this case admitted a very extensive interpretation. It comprehended the monopoly of supply, the monopoly of colonial produce, and the monoply of manufacture. By the first the colonists were prohibited from resorting to foreign markets for the supply of their wants; by the second, they were compelled to bring their chief staple commodities to the mother country alone; and by the third, to bring them to her in a raw or unmanufactured state, that her own manufacturers might secure to themselves all the advantages arising from their further improvement. This latter principle was carried so far in the colonial sys-

tem of Great Britain as to induce the late Earl of Chatham to declare in Parliament that the British colonists in America had no right to manufacture even a nail for a horseshoe.»

Adam Smith goes too far in asserting that a monopoly of the trade of its dependencies is necessarily hurtful to the dominant country. On the other hand, even if it be admitted that the dominant country may occasionally derive some temporary benefit from a monopoly of the commerce of the dependency, it may be safely affirmed that a monopoly will, in the long run, be detrimental to those for whose supposed benefit it exists.

No trade can continue long to be carried on with profit which is not beneficial to both the parties concerned in it. If the ships of a dependency are restricted to the ports of the dominant country, this restriction proceeds upon the assumption that the inhabitants of the dependency, if permitted to buy and sell where they pleased, would buy or sell in some other country. If they are not permitted to trade with whom they please, they will not be able to trade to the greatest advantage, and their progress in industry and the accumulation of wealth will probably not be rapid. Now if a community be not industrious and wealthy, no profitable trade can be permanently carried on with it. The best customer which a nation can have is a thriving and industrious community, whether it be dependent or independent. The trade between England and the United States is probably far more profitable to the mother country than it would have been if they had remained in a state of dependence upon her.*

It must be remarked, moreover, that the dominant country, in monopolizing the trade of its dependencies, disregards the opinion as well as the interests of their inhabitants. In its relations to its immediate subjects, a

* If the United States were a self-governing colony, they would probably be more profitable to Great Britain than they are now, for presumably they would have, *e. g.*, been less likely to pass a McKinley tariff bill; but Sir G. Lewis would no doubt have answered that a self-governing colony is not «in a state of dependence» on the mother country.—Ed.

supreme government endeavors to disguise the selfishness by which it may really be determined. Though manifestly pursuing its own advantage to their manifest detriment, it evinces its deference to their opinion by pretending to consult their interests. But the policy which determines a dominant country to monopolize the trade of a dependency is avowedly calculated to promote the good of the former at the cost of the latter. It shows that the dominant country despises the opinion of the dependent people; and, by thus wounding them in their feelings, as well as in their economical interests, it disposes them to throw off their dependent condition on any favorable opportunity for successful revolt. The tendency, therefore, of this erroneous policy is to produce a violent separation of the dominant and dependent countries, and to bring upon both of them the evils of war.

Another objection to a monopoly of the trade of dependencies is the system of smuggling to which it necessarily gives rise, if the trade from which other nations are excluded is likely to be extensive and profitable. Since the inhabitants of the dependency have a common interest with the foreign trader to defeat the monopoly, the efforts of the dominant country to maintain it can scarcely be successful, although she may make large sacrifices of money for the purpose. If a nation persist in maintaining a monopoly of the trade with numerous and important dependencies, it may thereby create a system of armed smuggling and piracy, which may amount to a perpetual succession of petty hostilities. The Buccaneers were, as is well known, the creatures of the exclusive colonial policy of Spain; and these piratical traders became so numerous and powerful that they prevented Jamaica from again falling into the hands of the Spaniards after it had been taken and occupied by the English: and they are said to have even meditated at one time the establishment of an independent state in the West Indies.

It may be added that the monopoly of the trade with extensive dependencies is likely to produce, not merely systematic smuggling and piracy, but also wars with foreign countries. It is well known that jealousies

respecting colonial trade led frequently to misunderstandings, and sometimes to wars between the principal European states. The Spanish war which began in 1738, was, as Adam Smith remarks, principally a colony quarrel, its main object having been to prevent the search of the colony ships, which carried on a contraband trade with the Spanish main.

In consequence of the numerous and weighty objections to the monopoly of the trade of its dependencies by the dominant country, and of the difficulties of enforcing such monopoly, the system has now been to a considerable extent abandoned, especially by England, whose commercial dependencies exceed those of all other countries put together.* England has, of late years, even gone to the opposite extreme, and has sacrificed its own commercial interests to the supposed interests of some of its dependencies, as, for example, by imposing lower duties upon Canada timber, Cape of Good Hope wine and West India sugar, than upon the same commodities being the growth of foreign countries.

The most plausible opinion respecting the commercial advantages derivable from dependencies seems to be, that the dominant country, by securing to itself an unrestricted trade with them, can prevent them from establishing the protecting and prohibitory duties, which, if they were independent states,† they would probably impose upon imports. This advantage is, at present, a substantial one; but it is an advantage which is founded

* « After all the unjust attempts of every country in Europe to engross to itself the whole advantage of the trade of its own colonies, no country has yet been able to engross to itself anything but the expense of supporting in time of peace, and of defending in time of war, the oppressive authority which it assumes over them. The inconveniences resulting from the possession of its colonies every country has engrossed to itself completely. The advantages resulting from their trade it has been obliged to share with many other countries.» — Pt. III., Adam Smith's « Essay on Colonies.» [This volume.—Ed.]

† These words seem to show that the author did not contemplate the position of the present self-governing colonies, *i. e.*, nominal dependencies of the empire, which impose duties on the mother country just as on foreign nations. Probably he would have said that they are nothing less than independent states.— Ed.

exclusively on the perverse folly of independent states in imposing prohibitory and protecting duties on one another's productions. Thus the prohibitory duties levied in Great Britain upon foreign grain and other provisions have induced the United States to retaliate against Great Britain by imposing protecting duties upon foreign manufactures. When civilization shall have made sufficient progress to diffuse generally a knowledge of the few and simple considerations which prove the expediency of freedom of trade, and when, consequently, independent states shall have abandoned their present anti-commercial policy, the possession of dependencies will no longer produce the advantage in question. The advantage consists in the possession of a specific against the evils arising from an erroneous system of policy. Whenever the errors of the policy shall be generally perceived, and the system shall be exploded, the specific against its evil effects will be valueless.

The expectation that civilized nations may become, in no long time, sufficiently enlightened to understand the advantages of free trade is not visionary. Even at present a progress toward a less restrictive system of commerce is visible over the whole civilized world. Protecting duties between different parts of a country immediately subject to the same government are now generally abandoned. Yet Turgot's measure for permitting a free trade in grain between the different provinces of France caused an insurrection in 1775; the corn trade between Ireland and England was first opened by Lord Grenville's administration in 1806: and the remaining protecting duties between the same two countries were not removed till 1823. The principle of a free commercial intercourse has been extended by the Prussian league to a certain number of neighboring independent states. And although every nation still asserts the expediency of duties intended for the PROTECTION (as it is falsely styled) of native industry and commerce, and not for the levying of a revenue for the government, yet they all show a disposition to diminish the number and rigor of the prohibitions and restrictions by which this so-called protection is afforded. Thus

slow and painful are the advances of human reason, made, as it were, by groping in the dark, and retarded at every step by the opposition of short-sighted interest, the listlessness of routine, and the want of confidence in theoretical truths! If, however, the governments of civilized nations could once acquire so much reliance on the moderation and enlightenment of the governments of other civilized nations as to expect that the latter would allow an unrestricted trade with their own subjects, the motive for the acquisition and possession of dependencies, which is founded on the assumed folly of all governments respecting commercial intercourse, would no longer exist.

It may be added that, if a state of dependence checks the progress of a community in wealth and prosperity, the consequent limitation of its demand for imported commodities will more than compensate the advantages which the dominant country can derive from being able to regulate its commercial relations with the dependency. It is scarcely possible to conceive commercial prohibitions carried so far in the United States as not to permit a larger and more profitable trade with England than they would have carried on with her if they had remained English dependencies.*

4. Another advantage which a dominant country may derive from its supremacy over a dependency is, that the latter may furnish a field where the inhabitants of the former may find advantageous employment for themselves or profitable investments for their capital.

* The reversal of the system of commercial monopolies has been carried so far by Great Britain that her self-governing colonies are, generally speaking, precluded from imposing any differential duties, and from treating one country better than another in the matter of imports, whether it be the mother country, another colony, or a foreign country, while at full liberty to raise, reduce, or abolish, any duties on all alike. By an act of 1873, however, any two of the Australasian colonies may make a special arrangement with each other as regards duties on the importation of each others' products. The exceptional conditions arising in the case of a colony largely coterminous with a foreign country have also been recognized in the customs arrangement concluded between the Cape Colony and the Orange Free State, and the former reciprocity treaty between Canada and the United States.—Ed.

With respect to public offices in dependencies, in the gift of the supreme government, it may be remarked that the number of them can scarcely be sufficiently large to form an important resource to the people of the dominant country, although they may be convenient to its government as a source of patronage. Moreover, it is desirable in general (as will be shown hereafter) that none but a few of the principal government officers in a dependency should be natives of the dominant country. Even if this be denied, it will scarcely be maintained that a country ought to be kept in a state of dependence merely for the profit of the few natives of the dominant state who may be employed in governing it.

A more solid and general advantage, which the people of a dominant country may derive from the possession of a dependency, consists in the facilities for emigration and for the acquisition and cultivation of land which it may afford to them. It is, however, important for our present purpose to consider whether this advantage arises from the settlement being a dependency, or would not arise although it were independent.

It has already been remarked, that a colony may be independent from its first foundation; and that such was the case with the Greek colonies, whose growth was, perhaps, more rapid and vigorous than that of any other colonies in ancient or modern times.* The Anglo-American colonies, which were partly founded in order to afford employment for the superfluous labor and capital of the mother country, were, as has been already stated, nearly independent, and derived little benefit from the few instances in which the supremacy of the mother country was exercised over them. A body of emigrants may, therefore, found a new colony, which, by receiving fresh supplies of settlers from the mother country, may gradually become a flourishing community, although its government be independent from the beginning.

The system of defraying the expenses of emigrants from the proceeds of the sale of public lands in the colony does not necessarily suppose that the new settle-

*See Pt. II. Adam Smith's "Essay on Colonies," this volume.—Ed.

ment is a dependency of the country which sends out the emigrants. If it were advantageous for a new settlement to employ a portion of its public revenues (whether arising from the sale of lands or from any other source) in procuring immigrants, its government would naturally devote a portion of its revenues to this purpose, whether the settlement were independent or dependent.

It must be admitted that distant territories in a state of dependence would be colonized more advantageously than if they were independent, assuming that the government of the mother country exercised a judicious control over their colonization. In modern times, however, the success of dependent colonies seems to have been owing rather to the enterprise and industry of the colonists themselves than to any assistance which they have received from the mother country, though the political dependence of some of them may perhaps have been necessary to their security during their infancy.

On reviewing the history of the Greek colonies, the conquests of Alexander and of the Romans, and the settlements of the modern European nations in Asia, Africa, America, and Australia, it will be seen that the advancement of mankind is to be expected rather from the diffusion of civilized nations than from the improvement of barbarous or half-civilized tribes. The promotion of successful colonization is, therefore, one of the best means of advancing and diffusing civilization, and raising the general condition of mankind; and whoever can devise or carry into execution any effectual means for facilitating and improving it, is among the greatest benefactors of his race. But there is nothing in the colonial relation which implies that the colony must be a dependency of the mother country; nor generally is it expedient that such a relation should exist, even in the case of a newly founded settlement.

Land in a dependency is sometimes purchased by a native of the dominant state, who, without emigrating to the dependency, furnishes the capital necessary for the cultivation of the land, and employs a resident agent to superintend it. The chief part of the English

West India islands is owned by proprietors who reside in England; and the same is likewise the case with some parts of the cultivated districts of Australia. This facility might not exist if the settlement were an independent state, and its government, following the example of many other independent states, prohibited the acquisition of land by aliens.

It may be remarked generally, that the benefit of dependencies to the dominant country in promoting its trade, and affording facilities for the emigration of its surplus population, arises from the exclusive and anti-social policy to which independent states have been led by a mistaken view of their own interests. It being assumed that every dependency would, if it became independent, adopt this policy, the evils of dependence are inflicted upon it for the purpose of securing to the dominant state advantages which the latter would possess in an equal or greater degree if the dependency became independent and were wisely governed.

5. Another advantage which a dominant country may derive from its supremacy over a dependency consists in employing it as a place to which convicted criminals may be transported.

The practice of sending individual criminals to islands in the Mediterranean was employed by the Romans; and Tacitus states that under the Emperor Claudius, several thousand Jews whom the Roman government wished to remove from Rome, were deported to the unhealthy island of Sardinia. Some convicts were likewise sent from time to time by the Spanish and Portuguese governments to their American possessions.

But England was the first country which systematically used her dependencies as places for the reception and punishment of convicts. The transportation of convicts from England to the North American colonies, having been begun in the reign of Charles II., received a more regular and legal form in the early part of the following century, and was continued until those colonies became independent. In consequence of the loss of the colonies to which convicts were usually transported, a new settlement, intended expressly for the reception and

punishment of convicts, and thence styled a penal settlement, was founded in 1788 (only six years after the signing of the peace of Paris) in Australia.

The transportation of convicts to the North American plantations was probably suggested by the practice of voluntary emigrants, who were unable to defray the expenses of their passage from England, obtaining an advance from the planter, and redeeming the loans so advanced by working for him for a specified time, at a low rate of wages. It was found that the government might save the expense of maintaining convicts by selling them as slaves for a term of years, or for life, to a Virginia or Maryland planter. It appears, however, that at this time the working of the system of transportation depended solely upon the interests of the purchasers of convict labor, and that there was no inspection of the convicts by any government authority after they had landed in the colony. Accordingly, any convict who had the means of paying to the planter the price of his services, was free from the moment of his landing.

The transportation to the Australian settlements has been regulated by severer rules. Since the punishment of convicts was the main purpose for which the colony was founded, all the arrangements of the local government were made with reference to it. Moreover, every convict who arrived in the colony was subjected, whatever might be his pecuniary means or his former station in society, to some appearance of punishment, and was, at all events, prevented from leaving the colony.

The purpose of this Essay does not require me to give a detailed statement of the mode of managing the transported convicts which has been adopted in the Australian colonies, or of the changes which have been recently made in it. This subject has been exhausted by the reports of parliamentary committees (particularly by that of a committee of the House of Commons which sat in 1837), and by the labors of Archbishop Whately and other writers.

In consequence of the evidence thus obtained, the dis-

advantages of transportation, both to the dominant country and the dependency, have been shown by such convincing proofs, that the number of transported convicts has lately been diminished; and the system would probably have been abandoned altogether before this time, if its abandonment would not lead to the necessity of building penitentiaries in England. It is, however, to be hoped that this improvement will be effected before many years shall elapse.

It is possible that transportation might be usefully employed in combination with efficient penitentiaries, as a means of providing for convicts who have completed the term of their imprisonment. It happens frequently in a thickly peopled country where employment is not easily obtained, that a convict recently discharged from prison is incapable of earning his livelihood by his own industry, and that the circumstances in which he is placed almost force him back into a life of crime. Now if a convict were, upon his discharge from prison, furnished with the means of emigrating to a distant colony, he might, if he were willing to accept the offer, be placed in circumstances which would enable him to lead a life of honest industry.*

* It must be borne in mind that various classes were in old days transported, and under different conditions, and that there was the double object always present of at once ridding the home country of undesirable people, and finding settlers or laborers for distant lands. In addition to free laborers who went out under contract to English or French colonies there were, (1) convicted criminals, (2) vagrants, debtors, etc., (3) political or religious prisoners. The first class, convicted criminals, were dealt with in different ways. Some were practically given their freedom on condition of going out; it was in this way that the Spanish government supplied Columbus with followers, and that English and French explorers, like Frobisher and Cartier, obtained recruits for their voyages. Others were penally bound as slaves to plantations for a term of years, as, for instance, in Virginia or Barbados. As regards the second class, Cromwell ordered the Scotch government to apprehend the idle and vagrant, and send them to Jamaica, while the colony of Georgia was started in great measure as a philanthropic effort to relieve the debtors' prisons in England. Of the third class, numberless illustrations could be given. Cromwell, after the battle of Worcester, and James II., after Monmouth's Rebellion, shipped off their political prisoners to the American and West Indian colonies, while the Jews, whom the Portuguese

6. The principal advantages which a country may derive from the possession of dependencies have now been enumerated and severally examined. There are, however, supposed advantages flowing from the possession of dependencies, which are expressed in terms so general and vague, that they cannot be referred to any determinate head. Such, for example, is the glory which a country is supposed to derive from an extensive colonial empire.

We will merely remark upon this imagined advantage, that a nation derives no true glory from any possession which produces no assignable advantage to itself or to other communities. If a country possesses a dependency from which it derives no public revenue, no military or naval strength, and no commercial advantages or facilities for emigration which it would not equally enjoy though the dependency were independent, and if, moreover, the dependency suffers the evils which (as we shall show hereafter) are the almost inevitable consequences of its political condition, such a possession cannot justly be called glorious.

transported, proved a most valuable element in the colonization of Brazil and Guiana.

If the colonies did not object, there would be a great deal to be said for sending convicts, after their term of imprisonment has expired, to start life afresh in a new country; but the feeling, even against receiving honest people, if they have been helped out at the expense of the rates, is very strong in America and Australia.—Ed.

## CHAPTER VII.

### Advantages Derived by a Dependency from Its Dependence on the Dominant Country.

We proceed next to consider the advantages which a dependency may derive from its dependence on the dominant community.

The most obvious of these advantages is protection; since the relation between the two communities is owing to the comparative strength of the one and the comparative weakness of the other, and it is the interest of the stronger community to protect the weaker against foreign aggression. The dependency can hardly fail to derive great benefit from the protection thus afforded to it, if it be not required by the dominant country to contribute to its own military and naval defense, or the general military and naval defense of the empire. Even, however, if it should be required to contribute to those purposes, the benefits are considerable in spite of the price which it pays for them. If it were independent, its feebleness would expose it to frequent aggressions from other independent states; but in consequence of the protection received by it from the more powerful community on which it is dependent, it is comparatively secure from that great evil, though subject to the evils inherent in its dependent condition.

The benefit just adverted to is the greatest, when the need of protection is the greatest; in other words, when the dependent community is in the feeblest and most helpless condition. Accordingly, a dependent colony recently founded, if it be exposed to attacks from other civilized nations, or from neighboring tribes of barbarians, derives much advantage from its dependence upon its mother country, provided that the mother country be able and willing to afford it the protection of which it is in need. But even if a newly founded colony should be

exposed to this danger, the dominant country may not always be able or willing to afford it timely protection; as is proved by the unhappy fate of the French Huguenot colony in Florida, which was extirpated by the Spaniards soon after its foundation, and nearly all the members of it massacred.

We may here remark that the members of a dependent community which is too weak to stand by itself, and whose territory possesses advantages rendering it an object of desire to independent states, ought to guard carefully against the natural error of supposing that they will benefit by a change of masters. They ought to remember constantly that they are condemned by natural causes to a state of dependence; that the evils which they suffer under their actual rulers may be inseparable from that condition; and that, though those evils may be partly imputable to the misconduct of their actual rulers, a revolt or other defection might transfer them to worse masters, after it had exposed them to the evils which are incidental to a political revolution.

Another advantage which a dependency may derive from its dependence, is pecuniary assistance, to a greater or less extent, from the dominant country. For, as a weak community benefits by its dependence on a stronger one, so a poor community frequently benefits by its dependence on a country richer than itself. In ancient times dependencies were always tributary, and the dominant state never expended upon them any funds derived from its own immediate resources. The great military roads and other works executed by the Romans in the provinces were probably made in great measure at the cost of the provinces themselves, though the conception and the execution of them were due to the Romans. In modern times, however, a dependency has sometimes received pecuniary assistance from the dominant country. Thus the English Parliament has voted large sums of money for the making of the Rideau canal in Canada. A considerable sum of money was given by England for the purpose of defraying the expenses incurred by the local government of Malta during the prevalence of the plague in that island in the years 1813–14. Much money

has been laid out by England in constructing fortifications in some of its dependencies; these fortifications, however, were rather intended for the benefit of the dominant country than for that of the dependencies in which they were raised. The expenditure of England in the penal settlements of Australia must also be considered as intended for the benefit of the mother country, although the settlements derive a great incidental benefit from it. The average annual expenditure of the French government upon Algiers has considerably exceeded three millions sterling: the chief portion of this expenditure is, however, for military purposes, and will therefore confer no lasting benefit upon the dependency.

As the interests of a dependency are, in its external commercial relations, usually sacrificed to those of the dominant state, the chief commercial advantage which it can derive from its dependence is the protection afforded to its trade by the dominant country against foreign aggression. Moreover, goods imported into the dominant country from the dependency are sometimes admitted into it upon conditions more favorable than those upon which goods imported into it from other places are admitted.

The evils suffered by a dependency, from the indifference of the dominant country about its interests, will be particularly considered in a following chapter. But we may remark appropriately in the present place, that this indifference is sometimes advantageous to a dependency, or at least to the bulk of its population. For example, let it be supposed that the influence of the wealthier inhabitants of the dependency gives them an ascendancy in the local government; and that the same influence would give them the government of the dependency in the event of its becoming an independent state. Let it be supposed, moreover, that some institution of the dependency is oppressive to the majority of the inhabitants; but that the interests or prejudices of the influential and ascendant minority strongly incline them to maintain it. Now if the dependency were independent, its supreme government would perpetuate the institution indefinitely. In consequence, however, of its dependence,

there is a chance that its supreme government may abolish the institution spontaneously, or may be forced to the measure by the public of the dominant country; for, as the inhabitants of the dominant country are generally indifferent about the concerns of the dependency, so are they naturally free from the interests and prejudices which lead the minority in the dependency to oppress the majority of their countrymen. Thus, if the British West Indies had been independent, the institution of slavery would have been perpetuated in them by their slave-owning legislatures; as appears from the persistence with which it is maintained in the slave-owning states of the American Union.* But the great majority of the British people, having no personal interest in maintaining it, naturally felt with the slaves and against their masters; and the British Parliament, determined by the opinion of that impartial public, abolished the institution in those islands, notwithstanding the opposition of the local legislatures.

* The statement in the text seems to be borne out by the consideration that slavery was not abolished in the United States without a great civil war.—Ed.

## CHAPTER VIII.

### Disadvantages Arising to the Dominant Country from the Possession of a Dependency.

Having considered the advantages which arise to the dominant country and the dependency from the relation between them, I proceed to consider the disadvantages which may arise to the former from the same cause.

1. It has been shown in a previous chapter that the dominant country can rarely succeed in compelling or inducing a dependency to contribute to the expenses of the supreme government; and, consequently, that the dominant country generally defrays from its own resources the expenses caused by the protection of the dependency in peace and in war. These expenses are a disadvantage to the dominant country, even if they should be more than compensated by advantages which it derives from the possession of the dependency. It may be added, that the possession of a dependency often proves a powerful incentive to improvident and useless expenditure on the part of the supreme government; as is shown by the fortifications which have been raised in some of the English dependencies, and the prodigalities of the French government at Algiers.

2. In consequence of the prevailing errors respecting the nature of the advantages arising from trade, it is usual for the dominant country to grant commercial privileges, by discriminating duties and other similar regulations, to its dependencies. Thus the duties upon timber, wines, and sugar imported into England from Canada, the Cape of Good Hope, and the East and West Indies are lower than the duties upon similar commodities imported into England from foreign countries. But one effect of such privileges is, that the dominant country purchases the commodities imported from its dependencies at higher prices than it would purchase commodities of

the same sorts imported from other countries, if the privileges did not exist. Moreover, as commercial privileges granted by the dominant state to its dependencies imply corresponding prohibitions against other independent states, they provoke the governments of those states to foster the trade and manufactures of their own dominions by granting similar privileges to their own trading and manufacturing subjects. They, therefore, prevent that extensive commercial intercourse between independent communities, which would not only secure to each of them the greatest possible advantages of a merely economical nature, but would bind them together in mutual amity by the strong tie of common interest.

3. Another evil arising from the possession of dependencies is, that they tend to involve the dominant country in wars. A dependency may be situated at a great distance from the dominant country; or it may have a long and vulnerable frontier confining on the territories of other independent states. For these and other reasons it often happens that a dependency is difficult of defense, and that foreign governments are therefore tempted to invade it.

The probability that the possession of dependencies will engender wars is further increased by the jealousies which the commercial policy of the dominant country toward its dependencies produces. The alienation between independent states, arising from commercial jealousies of this sort, has just been pointed out. It has also been shown in a former chapter that Adam Smith considers disputes about colonial trade as one of the most prolific sources of war in modern times; and that Turgot expected that the independence of the American colonies would diminish the causes which disturb the peace of the world.

It may be said on the other hand, that the division of the civilized world into a few extensive empires, each consisting of a dominant country and its dependencies, would be more favorable to the preservation of peace than the division of the same region into independent states. It would appear from the perpetual hostilities between the republics of ancient Greece and Italy, and

between those of Italy in the Middle Ages, that a multiplicity of independent and small states multiplies the chances of war. It is certain, moreover, that the mutual wars of the numerous independent states subdued by the Roman arms were extinguished by their common subjection to the imperial city; and that the peace of the civilized world was commonly preserved by the imperial government, so long as the dependence of the provinces was not substantially impaired.

It may be replied, however, that the formation of extensive empires is not favorable to the preservation of peace, inasmuch as the subjection of dependencies to the dominant country is liable to frequent disturbance. If the strength of the dominant country is not overwhelming, and if (as freqently happens) the people of the dependency are dissatisfied with its government, the latter will probably attempt to throw off their dependence; and in consequence of such attempts, wars are likely to arise between the dominant country and the dependency, or between the dominant country and those independent states whose governments suppose themselves interested in wresting the dependency from her. We have remarked in a preceding chapter that an ancient state, engaging in a foreign war, often began the contest with striking at the connection between its enemies and their dependencies. The same policy determined the government of France to interfere in the war between England and her American colonies; and it is said that England in the last century meditated an attempt to detach the Spanish colonies of America from Spain.

The only effectual security against unjust wars between independent communities is to be found in an improved international morality, and in the general existence of a conviction that the interest of such communities is not promoted by a system of mutual aggression and rapine. So long as independent states think it their interest to attack weak communities, for the purpose of enlarging their empire, and they are free from any moral restraint which might check them in the pursuit of this supposed interest, unjust wars between civilized nations must take

place, although many small communities should be kept in a state of dependence. And if the governments of independent states should become sufficiently wise to abstain voluntarily from aggressions of this sort, the existence of numerous independent communities would not produce war.

4. Lastly, we may reckon among the disadvantages arising to the dominant country from the possession of dependencies, that it tends to generate or extend a system of official patronage in the dominant country, and thus to lower the standard of its political morality.

## CHAPTER IX.

### Disadvantages Arising to a Dependency from Its Dependence on the Dominant Country.

Having considered the disadvantages which may arise to the dominant country from the possession of a dependency, I shall consider such of the disadvantages effecting a dependency, as are necessary or natural consequences of its dependence on the dominant country. Since the disadvantages are necessary or natural consequences of dependence, all dependencies are subjected or exposed to them. It must be remarked, however, that they affect the inhabitants of different dependencies in different degrees; and where they are powerfully counteracted by special causes inherent in the special position and circumstances of a dependency, their pressure may be too gentle to affect its inhabitants seriously.

Before we proceed to a particular examination of any of the disadvantages in question, we will advert to the source from which they principally arise; *viz.*, the natural ignorance and indifference of the dominant country about the position and interests of the dependency. The dependency is necessarily separated from the dominant state by the distinctness of its immediate government; and, owing to this necessary separation, the inhabitants of the dominant state are naturally more indifferent and ignorant about the concerns of the dependency than those of any district of their own country. But the ignorance and indifference consequent upon this necessary separation are often increased by accidental causes which estrange the dominant country from the dependency. It often happens, for example, that the two countries are divided by distance;* or that the dependency is too insig-

* Steamers, and telegraphs, and cheap and regular postal communication, must be great and growing factors in diminishing the ignorance referred to in the text.—Ed.

nificant and obscure to attract the attention of the dominant country; or that the inhabitants of the two countries are of different races and speak different languages; or that their religions, their morals and manners, or their laws and other political institutions, are more or less dissimilar.

The ignorance of the dominant country about the position, circumstances, and interests of the dependency is productive of numerous evils, some of which we shall hereafter consider in detail. It may be here stated in general terms, that the dominant country, in consequence of this ignorance, often abstains from interfering with the concerns of the dependency where its interference would be expedient; and where it does interfere with the concerns of the dependency, its interference, as not being guided by the requisite knowledge of those concerns, is frequently ill-judged and mischievous.

The evils arising to the dependency, from the ignorance of the dominant country respecting its concerns, are enhanced by its indifference. Not only does the dominant country know little of those concerns, but it has little desire to know anything of them. Men's sympathies are in general too narrow to comprehend a community which is distinct from their own, although it may be ultimately subject to the same supreme government. Accordingly, the maxim that government exists for the benefit of the governed, is generally considered by the immediate subjects of a supreme government as applicable only to themselves; and it is often proclaimed openly that dependencies are to be governed, not for their own benefit, but for the benefit of the dominant state.

Nor are the ignorance and indifference of the dominant country about the concerns of the dependency limited to the supreme government. Hence, if any dispute should arise between the dependency and the supreme government, and if the dependency should appeal from the government to the people of the dominant state, it will probably find that it has not appealed to a better informed or more favorable tribunal. On the subject of the dispute, the people of the dominant country can scarcely be so well informed as their government; and in any struggle

for power between their own country and the dependency, they are likely to share all the prejudices of their government, and to be equally misled by a love of dominion and by delusive notions of national dignity.

As the main obstacles to the good government of a dependency are the ignorance and indifference * of the dominant country respecting its affairs, whatever tends to diminish them is likely to promote its good government. On this account, newspapers and other periodical writings having a special reference to the affairs of dependencies, and published in the dominant country, are eminently useful. For the same reason it is the duty of those public departments in the dominant country, which are specially charged with the care of the dependencies, to provide for the publication of statistical and other information respecting their condition, at stated intervals, and in a cheap and commodious form.

Having stated that the disadvantages affecting a dependency, which are in question in the present chapter, are necessary or natural consequences of its dependence, and having adverted to the source from which they principally arise, we proceed to consider the nature of some of these disadvantages, in some degree of detail.

One of these necessary or natural disadvantages is the peculiar liability of the laws of a dependency to technical objections.

The powers of a subordinate legislature are expressly or tacitly delegated to it by the supreme government. In order, therefore, to determine whether an act of such legislature has a binding force, it is necessary to look to the nature and extent of the delegation. If the act be not within the scope of the delegation, it is without any binding force, and will be annulled upon application to a competent tribunal. It is difficult to delegate a power

* Adam Smith did not regard neglect by the mother country as a disadvantage to colonies. He says (Pt. II. «Essay on Colonies,» this volume), «The Spanish colonies, from the moment of their first establishment, attracted very much the attention of their mother country; while those of the other European nations were for a long time in a great measure neglected. The former did not perhaps thrive the better in consequence of this attention; nor the latter the worse in consequence of this neglect.»—Ed.

of subordinate legislation in terms exactly expressing its purpose and extent; but unless this difficult task be perfectly accomplished, the validity of the laws which are made by virtue of the power is always questionable. Consequently, the laws of subordinate legislatures are liable to technical objections from which those of supreme governments are necessarily exempt; for, as the legislative power of a supreme government is not derived from any political superior, the validity of its laws cannot be questioned for want of authority in the lawgiver.

As the immediate government of a dependency is a subordinate legislature, its laws, like those of other subordinate legislatures, are liable to the technical objections noticed in the preceding paragraph. But, owing to causes which are peculiar to the legal systems of dependencies, its laws are also liable to technical objections from which those of other subordinate legislatures are exempt. For example, any law of an English dependency (whether colonized by Englishmen, or acquired by cession or conquest) may be impugned as not being consistent with certain fundamental principles to which the laws of an English dependency must, it appears, conform. The vagueness of the terms in which these fundamental principles are expressed may afford a plausible ground for objections to the laws of an English dependency, although it should have been colonized by Englishmen, and therefore possesses a legal system closely resembling that of its mother country; but if the dependency should have been acquired by cession or conquest, and its laws therefore differ in many respects from those of the dominant country, the objection has a much wider, and indeed an almost unlimited application. So again, if the supreme government introduces a large portion of its own law (written and unwritten) into a dependency by a general description, it may be doubted whether any of the rules comprised in the body of law so introduced can be altered by the subordinate without the express permission of the supreme government; although it may be scarcely possible for the subordinate government to legislate without altering some of them.

That this liability to objection on technical grounds is a great evil will not be disputed. It is manifest that all attempts to get rid of a law by impugning its validity, rather than by proving its inexpediency, and applying to the legislature to repeal it, are mischievous. Their mischievousness is owing mainly to the following causes: 1. Such attempts, being founded on a principle of general application, throw a doubt upon the validity of other laws than those which are directly attacked. 2. The annulling of a law has a retroactive operation, inasmuch as the acts done under it are also annulled; hence, unless the legislature should interfere specially,* a law is rendered *ab initio* void, by which people have regulated their conduct, and upon which prudent men have founded reasonable expectations. 3. This mode of proceeding is equally applicable to good and to bad laws; since the defects in the form of the law are wholly unconnected with its practical operation.

In general it is desirable that all rules (even though inexpedient) which have been long acquiesced in by common usage, and which have been believed to be invested with the legal sanction, should be considered by the courts and by the government to have a binding force, until repealed by a competent authority; and in most countries the courts have acted upon this principle.

It may be added, that the necessary vagueness of the rules respecting the portion of the law of the mother country, which is in force in a new colony (for example, of the rule of the English law, that a new colony acquires as much of the law of England as is suited to its condition), confers a very extensive power upon the courts of such a dependency, and invests them with legislative rather than judicial functions. It may, moreover, happen that the disposition of the courts to question the validity of the existing laws may be increased by a rivalry between lawyers of the dominant country and native lawyers in the dependency, or even by a more ambitious attempt of the judges to supersede the subordinate

* But as a matter of fact the legislature does interfere. A law is repealed by another law, and the repealing law provides in the ordinary course that acts done under the repealed law shall not be invalidated.—Ed.

government and to get the entire management of the dependency into their own hands.

Another of the necessary or natural disadvantages affecting a dependency, is its liability to an improper introduction of the laws, language, or religion of the dominant country.

The ignorance of the dominant country respecting the concerns of the dependency, combined with the habit, common to all nations, of preferring its own institutions and opinions to those of other communities, disposes it to dislike the laws, language, and religion of the dependency, and to substitute its own for them, without adequate reasons for making the change, and without a due regard to the position, circumstances, and interests of the dependent community.

The tendency to an improper introduction of the laws of a dominant country into a dependency is so strong that the question as to the extent to which, and the manner in which, the supreme government ought to introduce the laws of the dominant country into the dependency deserves a careful examination.

According to the rule which must, from the necessity of the case, obtain almost universally, new colonists take out with them the laws of their mother country, so far as such laws are suited to the condition of the colony. The question just stated, therefore, does not arise in the case of a dependency which is a colony of the dominant country; and it arises only in the case of a dependency which has been acquired by treaty or conquest, and has preserved its original laws and institutions, which are different from those of its dominant country.

Some of the most important considerations respecting the transplantation of laws from one country to another have been stated by Mr. Bentham in his "Traitées de Législation." The following are the two first maxims which he lays down: "No law ought to be changed, and no custom ought to be abolished, without some special reason." "No custom ought to be changed simply on the ground that it is repugnant to our habits and feelings."

These two maxims, however obvious and however impor-

tant, have frequently been violated in the transplantation of the laws of a dominant country to a dependency. Many laws in dependencies have been changed, not because they produced inconvenient consequences, but because they differed from the corresponding laws of the dominant country, or because they were inconsistent with opinions which the people of the dependency did not share with the people of the dominant country.

In deciding how far the native institutions of a ceded or conquered dependency shall be maintained, and how far the institutions of the dominant country shall be introduced in their stead, the persons conducting the government of such a dependency have strong inducements to adopt the latter course. It is far easier to administer laws with which one is familiar than laws which one has to learn by a laborious process of study. It is likewise far easier to carry on the business of government in one's own language than in a foreign language with which one is imperfectly acquainted, or which perhaps one is compelled to learn. Moreover, it requires a considerable sacrifice of self-love, and some magnanimity, for a ruler to subject himself to the necessity as it were of going to school, and to place himself voluntarily in a situation of inferiority, in respect of knowledge, to the persons whom he is to govern. Whereas, if the opposite system be adopted, the ruler is placed in a situation of almost immeasurable superiority to the natives, inasmuch as he is as far superior to them in knowledge as in power. Furthermore, there is the disinterested attachment which most men acquire for the institutions of their native country, partly from being habituated to live under them, and partly from being accustomed to hear them extolled and to be told that it is patriotic to admire and love them. Consequently, when we see a native of the dominant country aiming at an injudicious introduction of its institutions into a dependency, it ought not to be inferred that he is actuated solely by a desire of increasing his own power or importance. Many such attempts have been made from a sincere, though mistaken, notion of the intrinsic excellence of the institution, and from a supposition that it was suited to all countries and all states of civilization. The

introduction of the tenure of land into Hindostan, which is known by the name of the PERMANENT SETTLEMENT, was prompted by the desire of creating in Hindostan such a body of wealthy landowners as exists in England; and though the measure has been most disastrous in its consequences, yet there is no doubt that the author of it thought that the state of things which he attempted to introduce would regenerate Hindoo society. In like manner an English lawyer would naturally, from ancient habit, seek to introduce trial by jury in any dependency where he was employed, however little suited to the circumstances of the country this mode of trial might be.

But a government which attempts to change suddenly the law of a dependency will soon find that it has undertaken a difficult, and, in part, an impracticable task.

In the first place, the civil law of a country can hardly be supplanted by a foreign system of jurisprudence without throwing into confusion all titles to property and all rights founded on contracts. The wholesale importation of a foreign system of jurisprudence necessarily creates great confusion in this respect, even if it should be effected by the communication of written laws. But the confusion is increased still further, if an attempt should be made to import a body of unwritten law. Law existing in the form of a statute or a code can be transferred from one country to another with certainty, since a precise designation of the law intended to be transferred can be given. Thus (as we have already stated) the act styled the Declaratory Act of the Bahama Islands, determined how much of the statute law of England should be deemed to be in force in those islands, by enumerating the statutes to which it refers. But unwritten law, which does not exist in a compact or explicit form, and which must be collected from the decisions of courts and from authoritative text writers, cannot be designated with precision, and can be described only by terms of which the import is unfixed and fluctuating. Thus the "criminal law" of England was introduced into Canada in 1774; but it is not at all clear (as Lord Durham states in his Report) what is the extent of this phrase. Again, in Canada the French law of evidence obtains in all civil

proceedings, with the exception of "commercial cases," to which the English law of evidence is to be applied; but (as Lord Durham further states) no two lawyers agree in their definition of "commercial cases."

There is, moreover, great difficulty in introducing into any country a foreign system of judicial procedure, and expelling the system established in the practice of the courts. The rules of judicial procedure commonly exist as usages and not in the form of legislative regulations; and these usages are mainly preserved among the body of advocates. The advocates may, therefore, be considered as a sort of voluntary auxiliaries to the government, for the purpose of administering justice; so that any change which renders their acquired knowledge useless, must for a time throw serious impediments in the way of the regular conduct of the government.

In the next place, it is to be remembered that a large part of the habit of obedience to a government rests upon associations with ancient institutions and ancient names; and that a sudden introduction of foreign laws and usages into a dependency is likely to breed serious discontent, and to embarrass the operations of the government, even if these laws and usages should be intrinsically better than those which they supplant. An example of such a wanton change of laws is afforded by the conduct of the French during their short-lived possession of the island of Malta in 1798. Although the government had been, up to the moment of their arrival, in the hands of a monastic order, and although the people were completely imbued with the old Catholic ideas, the French, nevertheless, almost immediately after they had assumed the administration of the government, set about introducing the modern laws of revolutionized France, such as the secularization of the church property, the suppression of convents and monasteries, the abolition of entails, and so forth. The consequence was that the inhabitants soon rose in insurrection against their new rulers, and called in the assistance of the English, who blockaded Valletta, and ultimately compelled the French garrison to capitulate. The recent conduct of the French at Algiers appears likewise to have been dictated in some

respects by a similar disregard for the peculiar opinions and usages of the native inhabitants.

If the rulers of a ceded or conquered dependency should be determined, by the considerations to which we have adverted, to retain the body of the native institutions and usages, then another class of difficulties arises.

The government of a dependency which is virtually dependent must be superintended and mainly conducted by the dominant country, and, to a certain extent, by natives of the dominant country. Now the natives of the dominant country who are employed in governing a dependency are necessarily ignorant, to a great degree, of its peculiar institutions, and they are perhaps ignorant of its language. They may, however, to a considerable extent, overcome these obstacles to good government. They may acquire a competent knowledge of the peculiar institutions of the country, and before deciding on any legislative innovation they may consult a person versed in the native law. They may also learn the language of the place; a task of no great difficulty for a few educated persons, though impossible for an entire population.

Yet, however unprejudiced and candid such a ruler may be, it is scarcely to be conceived that he should not have some undue bias in favor of the institutions of the dominant country, and against the institutions of the dependency: so that he is likely to incline to the improper introduction of the former in the place of the latter, and may thus not only produce confusion in the laws of the place, but may also unnecessarily offend the opinions and disturb the habits of the people.

After all, the rulers of such a dependency may find that their best intentioned efforts to promote the general welfare are misconstrued, attributed to bad motives, and received with coldness, mistrust, and ingratitude, either because they do not coincide with the prevailing sentiments and opinions of the people, or because they emanate from natives of the dominant country.

These remarks show that much mutual forbearance, on the part both of government and people, is requisite in a dependency so situated.

On the one hand, the rulers should not expect that the government of such a dependency is to be as easily and satisfactorily conducted as that of an independent state; and they, therefore, should be prepared to meet with many crosses and disappointments in the management of its affairs. The people are inevitably prejudiced against them and their mode of carrying on the government, and involuntarily refer measures and actions to standards of which the rulers are ignorant; while THEY naturally see the prejudices of the people in a strong light, because those prejudices are different from their own. Under these circumstances, it is the duty of such a ruler to view with an indulgent and favorable eye the character and manners of the people placed under his care; to be kind to their virtues, and a little blind to their defects. As Coleridge says in his remarks on Sir A. Ball; «A more venial and almost desirable fault can scarcely be attributed to a governor than that of strong attachment to the people whom he is sent to govern.»

On the other hand, the people in such a dependency should remember that they hold their peculiar laws and institutions at the pleasure of the dominant country; and that the government can at any moment throw everything into confusion, by setting the public opinion of the dominant country against the dependency, and by raising a cry that its interests are sacrificed to those of its dependency; which, though not a popular cry in the dependency, is a popular cry in the dominant country. They should remember that the government, by retaining the native institutions of the dependency, necessarily subjects itself to some of the errors of ignorance; since persons who are not natives of the dependency cannot thoroughly understand its peculiar institutions. They should also make allowance for the natural preference of nearly all men for their native laws and usages, and their sincere desire to introduce them in other countries, without any intention of aggrandizing themselves, or depressing the natives. They should likewise be prepared for some religious repugnance, for the religious intolerance which shows itself in opinion, if not in the law, and perhaps for

attempts to convert them to the faith of the dominant country, which may spring from benevolent though mistaken motives.

In general, the natives of such a dependency should always seek to put a fair and candid construction on the conduct of the government; they should abstain from condemning it hastily, and should make due allowance for the difficulties and disadvantages of its position; they should excuse slight errors of judgment where they see a generally good disposition, and should remember that the ultimate appeal lies to a quarter (*viz.* the public opinion of the dominant country) where there is little knowledge of the peculiar opinions and feelings of the dependency, and little disposition to sympathize with them. Moreover they should avoid the error of blaming a political measure, merely because they themselves had no concern in it.

So great are the disadvantages of dependence, that it is in general fortunate for a civilized country to be sufficiently powerful to have an independent government, and to be ruled by natives. But if a civilized country is, from its size, and other natural circumstances, condemned to political dependence, it is incumbent on every wise and patriotic man whose lot is cast in it, not to lament the inevitable results of the smallness of its territory or the scantiness of its population, or its political weakness, but to seek to procure for it all the benefits compatible with its position, and to render its dependence on the dominant country as little onerous as possible.

Having concluded these general remarks on the tendency of a dominant country to make unnecessary changes in the institutions of a ceded or conquered dependency, by the introduction of its own peculiar institutions, we proceed to consider somewhat more in detail the circumstances which ought to determine the dominant country to a greater or less extension of its peculiar institutions to such a dependency.

The preceding remarks have been intended to show that, unless the dependency is a colony which has carried out with it the laws, opinions, and customs of the domi-

nant country, it is subject to violent changes of its laws, dictated by the insufficient knowledge of its peculiarities, and the reasons of such peculiarities, which is possessed by its rulers, or by their want of sympathy with the opinions and usages of its people.

When the dependency is a colony of the dominant country, which settled in an uninhabited district, or which has reduced the native population to a condition of slavery, or has completely absorbed them into its own body (as was the case with the Greek colonies on the coasts of the Mediterranean), or which has expelled or exterminated the aboriginal inhabitants (as has been done by the Spanish and English colonies in America and Australia) — there is a general agreement between the laws of the mother country and the dependency, and the mother country has no inducement to disturb the laws of the dependency, for the purpose of introducing its own laws in their stead.

The question can arise only respecting a dependency which, not being a colony of the dominant country, possesses peculiar laws and institutions, either formed under an independent government of its own, or derived from its own mother country. The cases in which the question arises may be considered to be threefold; the difference between them being, however, a difference only of degree.

In the first of three cases, a civilized nation acquires a territory completely occupied by a people in a low state of civilization and governs it as a dependency. The British dominions in Hindostan afford a remarkable and well-known example of this case of the problem. In the circumstances just stated, it is desirable to introduce into the half-civilized dependency as much as possible of the laws of the civilized dominant country. But unless the introduction of the institutions of the dominant country into a dependency thus situated be made with great caution, circumspection, and skill; and unless the persons employed in administering the government qualify themselves for the task by much previous study and reflection, great evils may be expected to result from it, as has been proved by the experience of the English rule in the East Indies.

The following are some of the evils which have resulted from the rule of the English in the East Indies. Hasty and crude acts of legislation have emanated from the government, making extensive changes in large classes of existing rights, and thereby creating a general feeling that property and industry are insecure. This conduct of the British government in India has been the more remarkable, since the English are in general averse to sweeping political changes, and are not, like the French, accustomed to carry out principles in practice to their furthest logical consequences. While these sweeping and almost revolutionary changes of property have been going on, no attempt has been made to dissolve the alliance between the law and the religion of the country, which is the great obstacle to social progress in Hindostan, as in the other Oriental states. Up to the present day the muftis and the pundits are the only professors of Mahomedan and Hindoo law in India, and the judges and advocates have recourse to them for the solution and decision of any question belonging to their respective systems of laws, which may arise in actual practice. The code which has been prepared by the recent commission in India will for the first time confer on the Hindoos the inestimable benefit of a body of positive law, which professes to rest on merely human authority, and which may therefore be reasoned about or even altered without impiety.

It may be remarked, that where a civilized people (such as the English in India) make any extensive and mischievous change in the laws of a people of inferior civilization, the latter are unable to resist the change, on account of the greater energy, knowledge, and resources of the ruling class, their mutual reliance and their powers of co-operation and assistance.

Although British India may have derived considerable benefit from the superior honesty and intelligence of the English office-holders, yet the practice of employing Englishmen exclusively in all important offices has, on account of the necessity of giving them high salaries and the inadequacy of the native public revenue, led to the accumulation of an enormous mass of duties on the

head of a single person, and has produced a practical denial of justice, and an abdication of the most useful functions of government, in many parts of the country. The insults often offered to the feelings of the natives by the overbearing behavior of the English would be of less importance, if the more permanent and serious interests of the people were efficiently protected. But unhappily it seems that, in most parts of the country, life and property are scarcely more secure than they were under the native governments, and that the main benefit which the people have derived from the British rule is the exemption from foreign invasion.

Though a prospect of benefit to the people of India has been recently opened by the measures of the government for the improvement and diffusion of education, and the more extended employment of the natives in the public service, it is lamentable to think how little good has hitherto resulted to them from the acts of a government which has of late years been, perhaps, the most benevolent which ever existed in any country.

In the second of the three cases, a civilized nation acquires a dependency inhabited by a civilized people, but only thinly or partially inhabited, and, therefore, offering facilities for the settlement of immigrants from the dominant country. This is the case with Canada, and it is a case which offers peculiar difficulties in practice. The struggle of the two populations on the same soil is likely to lead to a conflict between them, which will not be settled without the interference of the dominant country. It is difficult to decide upon what principles this interference should be made. On the one hand, the new immigrants may reasonably demand the alteration of any laws which debar them from occupying and cultivating the land, or which otherwise impede their industry or prosperity. On the other hand, the original possessors of the country have a just ground of complaint, if the institutions of the dominant state are introduced to a greater extent than is necessary for accomplishing these purposes.

In the last of the three cases a civilized nation acquires a dependency inhabited by a civilized people, but fully

peopled and affording no facilities for the introduction of new settlers. In this case it is fit that the dependency should retain its peculiar institutions; that its government should, as far as possible, be administered by natives; and in short, that the dominant country should create as little disturbance in the political management of the dependency as is consistent with its dependent position. The provinces of the Roman state afford an example of the mode of government in question; for although the Roman provincial governors were often rapacious, insolent and cruel, yet (as has been already remarked), it was the policy of the Roman government to interfere sparingly with the native institutions of the provinces. Every reader of the New Testament is aware how little the Romans interfered with the very peculiar institutions of the province of Judæa before they were provoked by the insubordination of the Jews to destroy Jerusalem.

Lombardy is a modern instance of the same sort of rule; for though this dependency of the Austrian Empire is subject to the general control of the imperial government, yet the details of its administration are managed by natives, and the Italian is the language of the government and the law. The governments of Malta and the Ionian isles afford other instances of the same system.

It may be remarked generally of dependencies belonging to the latter class, that when any of their laws are changed, the change ought to be made in the spirit of the existing institutions.

But if it be inexpedient for the government to change suddenly the LAWS of a dependency, it is still more inexpedient for the government to attempt to make a sudden change in its LANGUAGE. The acquisition of a new language is a slow and laborious process; and it implies an amount of diligence, leisure, and intelligence which cannot be expected of an entire community of adults. The great mass of mankind never acquire a language by study; they only know the language which they imperceptibly imbibe during infancy and childhood. It is no more possible for government, by the expression of its will, and by offering rewards or threatening punish-

ments, to change suddenly the language of its subjects, than to add a cubit to their stature or to give them a sixth sense. A government may publish its laws and other acts in a foreign language, but it cannot cause the people to understand them; it may prohibit advocates from pleading in their native tongue, but it cannot enable them, however much they may desire it, to plead in an acquired language; it may declare that contracts and testaments made in the language of the country are invalid, but it cannot enable parties to contracts or testators to comprehend the meaning of instruments drawn in a foreign tongue. Many examples might be given of the mischievous effects which have been produced by an attempt to force the language of a government upon the people. Thus when Joseph II. attempted to treat Hungary as a dependency, to incorporate it with Austria, and to reform its laws by his own authority, the people for a time submitted, unwillingly, to his useful though too hastily introduced reforms; but when he ordered St. Stephen's crown to be carried to Vienna, and issued an edict making German the language of government throughout Hungary, the people rose in insurrection against him. In like manner, the measures of the King of Holland for introducing the use of the Dutch language into Belgium, in the place of the French language which was spoken by the educated classes, created a general discontent throughout Belgium, and contributed materially to produce the Belgian revolution, and the consequent separation of Belgium from Holland.

Without going at length into the question of the influence of a common language in assimilating the opinions and customs of different parts of the same empire, and in cementing national union, we may remark that the use of a common language is consistent with the existence of the strongest antipathies between different communities, as is proved by the mutual hatreds of independent states, derived from the same national stock and speaking the same language in ancient Greece, and in modern Italy and Germany. Even, therefore, if a dominant country should succeed in diffusing its own language among the people of a dependency, it might fail in creat-

ing the attachment to its government, which was the end sought by the introduction of its language. And if by a forcible or over-hasty introduction of its language it engendered discontent in the dependency, it would produce an effect the very opposite to that intended; since, instead of attaching the people of the dependency to itself, it would strengthen their aversion to its supremacy. It is obvious that the best mode of incorporating a body of people with the rest of an empire is to render them contented and happy; and that any measure which renders them discontented is likely to prevent that incorporation.

In like manner, it can rarely happen that any reason should exist why the supreme government should attempt to change the religion of a dependency, whose people have a religion different from that of the dominant country. The RELIGION of a people is in general less easily changed by a government than their language. The history of Europe abounds with examples of the misery produced by the ineffectual attempts of governments to convert their subjects to another creed by force or civil disabilities. Even Mr. Gladstone (whose principles seem to lead to the conclusion that a sovereign legislature ought to use all the means in its power for diffusing among its subjects the religious faith which the majority of its members believe to be true) admits that a dominant country is not bound to deprive a church in a dependency of it endowments, although the doctrines of that church may be different from those of its own established church or churches. Indeed, dependencies have been so far treated as separate from the dominant country for religious purposes, that the English North American colonies were regarded as asylums against religious persecution and no attempt was made by the government of the mother country to interfere with their peculiar religious tenets and modes of church government.

The self-partiality which leads the dominant country to introduce its own laws, language, and religion into a dependency, without due regard to the circumstances and interests of the latter, also brings upon the dependency other evils of a similar nature. Thus it causes the appointment of natives of the dominant country to offices

in the dependency, and the exclusion of natives of the dependency from them, without sufficient reason for the preference.

The following remarks will serve to indicate the principal disadvantages arising to the dependency from this source.

The natives of the dominant country are in general imperfectly acquainted with the circumstances of the dependency, with its laws and customs, and sometimes with its language. They are, therefore, not qualified to fill any office in it, of which the duties are not merely mechanical. The appointment of natives of the dominant country is also naturally viewed with dislike by the people of the dependency, and therefore renders the government unpopular among those who are immediately subject to it. Moreover, the exclusion of the natives of the dependency from offices in their own country diminishes their incentives to industry and useful exertion. It is, likewise, more expensive to employ natives of the dominant country in the public offices of a dependency, than natives of the dependency itself, since the former must be compensated for the sacrifice which they make in leaving their home and native country; and often in living in a climate pernicious to their health.

Not only, however, is the dominant country induced by its self-partiality to appoint natives of its own to offices in the dependency, but from its general indifference about the welfare of the dependency; it often selects these persons without a due regard for their qualifications. Hence the wish to provide for political partisans or private friends, by placing them in public offices, has frequently been gratified at the cost of dependencies. This is no modern evil; for, from the time of the Romans downward, a provincial governorship or other appointment seems to have been regarded as a legitimate means of repairing a shattered fortune.

The preceding remarks respecting the appointment of natives of the dominant country to offices in a dependency are applicable, though not with quite equal force, to dependencies of all descriptions.

If the dependency is a colony of the dominant country, and its founders have consequently taken out with them its law, language, religion, and customs; natives of the dominant country are generally fitted, or can, without any great difficulty, fit themselves, for public offices in the dependency. But unless there should be in such a dependency an insufficient number of persons competent for public offices, it is inexpedient, for the reasons already assigned, systematically to appoint to them natives of the dominant country. If the dependency have been acquired by conquest or cession, and if its laws, language, religion, and customs should in consequence be different from those of the dominant country, it is extremely difficult for a native of the dominant country to qualify himself for the performance of official duties in the dependency. It may sometimes be necessary (though this necessity can seldom arise) to introduce the laws of the dominant country into a dependency of the latter sort. If such a necessity should occur, natives of the dominant country must be employed for the purpose of introducing them.

Inasmuch as the natives of a dependency do not aspire to offices in the dominant country, they reasonably expect to be appointed to those in their own little community.* Not only, therefore, are their feelings wounded by their exclusion from these offices, but this injury to their feelings is aggravated by the incompetency of the natives of the dominant country who are appointed to them. The appointment of incompetent persons to offices, and the exclusion of competent persons from them, is of peculiar importance in a dependency;

* Adam Smith in Pt. III, of his «Essay on Colonies,» this volume, lays great stress on the necessity of giving openings in public life to the inhabitants of a colony. He says: «Men desire to have some share in the management of public affairs chiefly on account of the importance which it gives them.» He argues that, if the mother country were to insist on taxing the colonies without the consent of their assemblies, that sense of importance would be outraged, and as a compensation he suggests representation in the Imperial Parliament, by which «a new method of acquiring importance, a new and more dazzling object of ambition, would be presented to the leading men of each colony.» — Ed.

for, as will be more fully shown in the next chapter, much depends, under any circumstances, upon the character and composition of the official body in a dependency which is not virtually independent. They cannot fail to exercise a considerable power; partly, on account of the necessary ignorance of the home government respecting the dependency, and of their having the chief means of furnishing it with information; partly, on account of the distance of the dependency from the dominant country, and the consequent latitude of discretion which must be allowed to them in the execution of political measures.

It may be here remarked that the arrangement of placing the civil and military government of a dependency under a common head, which convenience or economy has dictated in the early stages of a new settlement, or under other peculiar circumstances, has often been continued for a longer time than the circumstances of the case justified, and when a due regard for the interests of the dependency would have led to a separation of the military command from the civil government.

Owing to the general indifference and ignorance of the dominant country and the supreme government respecting the condition of a dependency, they do not think about its concerns in ordinary times and under ordinary circumstances. But if, on any extraordinary occasion, any question affecting a dependency should happen to excite the attention of the dominant country and the supreme government, it is rarely treated (especially if the form of the supreme government be popular) with reference to the true interests of the dependency itself, or even of the dominant country as regards the dependency; but it is commonly sacrificed to the temporary interests of the political parties in the dominant country which are contending for the possession of political power. In this manner the people of the dependency become the sport of questions and interests in which they are not concerned, and the nature of which they do not even understand.

It may be observed generally, that the more forbearing, considerate, and rational the conduct of the dominant

country toward its dependency may be, the less onerous is the dependent condition of the latter, and the less cogent are the objections to its continuance. On the other hand, the more irrational and unwise may be the conduct of the dominant country, and the more it sacrifices the permanent interests of the dependency to its own party conflicts (conflicts which are alien not only to the interests, but also to the feelings of the dependent people), the more desirable is it that the dependency should enjoy practical, and ultimately obtain legal, independence.

Before we quit this topic we may remark generally, that in consequence of the political relation which subsists between a dependency and the dominant country, the dependency bears a share, to a greater or less extent, of many of the calamities in which the dominant country may be involved through the errors of its government or from any other cause. For example, if the dominant country should be plunged in wars, either from the necessity of self-defense, or through its own ambition, or the ambition of other states, the dependency is necssarily a party to them. Hence its trade may be disturbed, its merchant vessels exposed to the risk of capture, and its territory even made the theater of war, without its having done anything to provoke hostilities, or having had any means of preventing them, and although it is only, as it were, a formal party to the dispute.

We shall consider at length, in the next chapter, the disadvantages arising to a dependency from the various forms which may be given to its immediate government. We will here briefly indicate a class of evils produced by its subjection to two distinct governments.

It has been stated above, that the establishment of a local subordinate government is intended as a remedy against the evils arising from the impossibility of maintaining a sufficiently rapid communication between the supreme government and the people of the dependency. The remedy is, however, imperfect; for, as the subordinate does not supersede the supreme government, cases not unfrequently arise in which applications are made by inhabitants of the dependency to authorities in the dom-

inant country.* There is likewise the enormous evil of appeals from courts in the dependency to courts in the dominant country. Sometimes the existence of a subordinate government aggravates the evils naturally arising from the distance of the supreme government, since an applicant may be referred backward and forward from one government to the other, and may be unable to obtain a distinct or final answer from either. The contrivance of a subordinate government renders the government of a distant territory POSSIBLE, but does not render it GOOD.

*It may be said that the introduction of more rapid communication by means of the telegraph has so far had the general effect of making the references to the mother country more frequent, without, however, removing the necessity for having a subordinate government.—ED.

## CHAPTER X.

### The Respective Inconveniences of the Various Forms Which may be Given to the Immediate Government of a Dependency.

From the disadvantages affecting the dominant country in consequence of its relation to the dependency, and the disadvantages affecting the dependency in consequence of its relation to the dominant country, we proceed to certain disadvantages (affecting one or both of the related communities) which cannot be referred exclusively to either head. The disadvantages now in question are the respective inconveniences of the various forms which may be given to the immediate government of a dependency. For our present purpose, these various forms may be conveniently arranged under the following general descriptions: 1. A body of persons representing the inhabitants of the dependency, or representing a larger or smaller part of them, exercises a constitutional control over the executive authority; or, in other words, it shares the powers of government, to a larger or smaller extent, with the authority in which the executive powers exclusively or principally reside. 2. The executive authority is not constitutionally controlled by any such body of representatives; or, in other words, the powers of government are exclusively possessed by the authority in which the executive powers are placed.

In considering the inconveniences of the various forms which may be given to a subordinate government, we shall begin with the inconveniences of the forms which fall under the latter description.

Where the form of the subordinate government falls under the latter description, the dependency may be governed in either of the following modes. The principles of its legislation and administration may be determined, and their details may be habitually conducted, by

the supreme government or the home department of the subordinate government; or the local government may manage its legislation and administration without any frequent interference from any authority in the dominant country. In either of the supposed cases, the dependency is exposed to the evils naturally suffered by the governed from a government over which they have no constitutional control; and in the first of those cases, it is also exposed to the evils naturally suffered by the governed from a government placed at a distance from their territory. It may be remarked, however, that the dependency, in the first of the supposed cases, would be a dependency in form rather than in substance; for as its legislation and administration would be habitually managed by direct interferences from the dominant country, it would, in substance, be directly subject to the supreme government.

In the second of the supposed cases, the local government may reside exclusively in the governor (or other head of the local authorities); or inferior officers of the local government, appointed by the home government, and holding their offices permanently, may control the governor in the exercise of his powers.

Where the local government resides exclusively in the governor, it is probable that the dependency will suffer from his incapacity, if not from other mischiefs naturally consequent on his uncontrolled authority. Generally speaking the governor of a dependency is incompetent to govern it in a manner fitted to promote its interests, on account of his imperfect acquaintance with its position and circumstances; and where he is not controlled by a representative body familiar with its position and circumstances, the natural consequences of his ignorance are not prevented or even corrected. It will appear sufficiently from a few brief considerations, that the governor (generally speaking) is imperfectly acquainted with the concerns of the dependency, or, for some other reason, is incompetent to manage them to its advantage. In the first place, he is commonly a native of the dominant country, or not a native of the dependency; and on his accession to his office, he, therefore, is necessarily

ignorant of the concerns of the latter. In the next place, as the office is rarely held by the same person for any long period, a governor is commonly removed from it just as he has acquired some knowledge of the concerns of the dependency; and, on his removal, he is followed by some successor who probably brings the same ignorance to the office, and who is probably removed from it just as he is beginning to qualify himself for it. This frequent change of governors imperfectly acquainted with the position and circumstances of the dependency, and unchecked by a representative body familiar with them, tends to produce (independently of other inconveniences) an instability in the legislation and administration of the dependency, which is highly detrimental to the interests of its inhabitants. In the last place, it often happens (from causes adverted to in the preceding chapter) that the governor is a military or naval officer, and, therefore, is unfamiliar with the principles and practice of civil government, as well as imperfectly acquainted with the position and circumstances of the dependency.

Where the governor is controlled in the exercise of his powers by such inferior officers as we have described above, another set of evils arises.

Officers of this sort, as holding their offices permanently, would probably know more than the temporary governor respecting the position and circumstances of the dependency; and to this extent their influence over the governor would produce a better administration of the government than if his power were altogether uncontrolled.

But the officers controlling the governor would form an oligarchy legally independent of the people of the dependency, and practically almost independent of the supreme government.

Such an oligarchy, unchecked by a body representing the dependency, would be more likely to use their powers for their own advantage and to the disadvantage of the dependency, than a governor in a similar predicament; for, as public opinion is always a less powerful restraint upon a body than an individual, the opinion of the people of the dependency, and of the government and people of the dominant country, would impose a more effectual

check upon an uncontrolled governor than upon an uncontrolled official oligarchy. It may be added, that the check imposed upon such an official oligarchy by the opinion of the people of the dependency would be almost nugatory, if (as commonly happens) the members of it were natives of the dominant country and not of the dependency itself.

As an official oligarchy thus situated is imperfectly checked either by the direct interferences of the supreme government, or by the indirect influence of the opinion of the dependency or the dominant country, frequent disputes naturally arise between the members of it, about their respective shares in the government, or about their respective emoluments or ranks; to the neglect of the affairs and interests of the dependency, and perhaps to the danger of a disturbance of its tranquillity. A striking example of the evils arising from this form of government is afforded by the conduct of the various local governments in India, before the proceedings in Hastings's trial and other circumstances had forcibly turned the attention of the English public to Indian affairs.

We have begun by supposing that this form of government would be better than that of an uncontrolled governor, on account of the greater knowledge of the concerns of the dependency possessed by the members of the official oligarchy. But if (as commonly happens) they are natives of the dominant country, their knowledge of the real condition and interests of the dependency would, in many cases, and especially in the case of a dependency acquired by cession or conquest, be not much greater than that of a temporary governor; although they would naturally excel him in a knowledge of the routine of the actual government. Consequently, this circumstance of superiority in the oligarchical form of government would have little in it to compensate for the various respects in which it is inferior to that of an uncontrolled governor.

It may be here remarked in conclusion, that where the temporary governor is not, according to the constitution of the government, subjected to the legal control of such

an oligarchy, he is in general controlled by one in fact. On account of his ignorance of the position and circumstances of the dependency, and, above all, of the routine of its actual government, he must trust to those who cannot fail to have acquired a considerable knowledge of the latter, although their knowledge of the former may be but superficial. Whenever, therefore, the executive government is uncontrolled by a body representing the community, all the powers of the local government will, in general, be vested, formally or virtually, in the hands of an oligarchy of the worst description:—an oligarchy unchecked by public opinion, and, if its members are not natives of the dependency, having little or no knowledge of the real condition and true interests of the governed, and little or no sympathy with their opinions and feelings.

It should not be overlooked that a popular form of the supreme government counteracts to a considerable (or, at least to some) extent the evils arising from the absence of popular institutions in a dependency. Although the popular form of the supreme government does not afford to the inhabitants of a dependency any of the characteristic securities of popular institutions (namely, a power of electing their own representatives), yet the publicity of the system of government, and the probability that some member of the supreme legislative body will take up their cause and obtain a hearing for them, afford them a considerable protection.

It may be here observed, that in rude communities the governor of a dependency has great facilities for throwing off his dependence, on account of the complete organization of the government over which he presides, the usual discontent of the dependency with the dominant country, and the small control exercised by the latter over the former. In barbarous or half civilized countries, the defects in the administrative machinery of the government, and in the means of communication, have led to various contrivances for securing the dependence of the provincial governors; for example, the shortening their period of office, the employment of agents to watch and report their proceedings, the fomenting of disputes between different governors, and so on. These

contrivances, however, have often failed to accomplish their end; for the defections of satraps in the ancient Persian kingdom, of governors under the Roman Empire, and of pashas and other similar officers in Oriental states in modern times, have been frequent, and have produced repeated wars with their attendant evils.

Where a representative body of the foregoing description has a share in the government, the dependency escapes the evils which would naturally fall upon it, if the government resided exclusively in the executive authority. But where a dependency (not doomed to dependence by its natural condition and circumstances) has such a security against the executive authority, its subjection to the dominant country is likely to be nominal rather than real. Such, at least, is the probable consequence of the security, where the representative body is invested with extensive powers, and where its members (from holding their places by popular election, or from some other cause) represent the opinions and feelings entertained by the mass of their countrymen. It is extremely difficult to reconcile the powers of such a representative body with the virtual subjection of the dependency to the dominant country. If the government of the dominant country substantially govern the dependency, the representative body cannot substantially govern it; and, conversely, if the dependency be substantially governed by the representative body, it cannot be substantially governed by the government of the dominant country. A self governing dependency (supposing the dependency not to be virtually independent) is a contradiction in terms.

Various plans have been tried or suggested for giving a dependency efficient popular securities against misgovernment, and for reconciling those securities with its perfect dependence on the dominant country. It should, however, be observed, that the trial of these plans has been nearly confined to the dependencies of England, since England is nearly the only country which in modern times has given its dependencies popular institutions.*

* Written it will be remembered before the development of the modern system of self-governing colonies; and, therefore, referring to the old constitutions of the American and West Indian colonies.—Ed.

The first plan which we shall examine is that proposed by Adam Smith, in his "Wealth of Nations," with reference to the English North American colonies. We will give this plan in his own words, for the purpose of explaining the views with which he proposed it. (The "Wealth of Nations," it should be observed, was first published in the year 1775, in which the American war of independence broke out.)

"Should the Parliament of Great Britain be ever fully established in the right of taxing the colonies, even independent of the consent of their own assemblies, the importance of those assemblies would from that moment be at an end, and with it, that of all the leading men of British America. Men desire to have some share in the management of public affairs, chiefly on account of the importance which it gives them. Upon the power which the greater part of the leading men, the natural aristocracy of every country, have of preserving or defending their respective importance, depends the stability and duration of every system of free government. In the attacks which those leading men are continually making upon the importance of one another, and in the defense of their own, consists the whole play of domestic faction and ambition. The leading men of America, like those of all other countries, desire to preserve their own importance. They feel, or imagine, that if their assemblies, which they are fond of calling parliaments, and of considering as equal in authority to the Parliament of Great Britain, should be so far degraded as to become the humble ministers and executive officers of that Parliament, the greater part of their own importance would be at an end. They have rejected, therefore, the proposal of being taxed by parliamentary requisition, and, like other ambitious and high-spirited men, have rather chosen to draw the sword in defense of their own importance."

. . . . . .

"The Parliament of Great Britain insists upon taxing the colonies, and they refuse to be taxed by a Parliament in which they are not represented. If to each colony, which should detach itself from the general confederacy,

Great Britain should allow such a number of representatives as suited the proportion of what it contributed to the public revenue of the empire, in consequence of its being subjected to the same taxes, and in compensation admitted to the same freedom of trade with its fellow subjects at home, the number of its representatives to be augmented as the proportion of its contributions might afterward augment, a new method of acquiring importance, a new and more dazzling object of ambition, would be presented to the leading men of each colony. Instead of bidding for the little prizes which are to be found in what may be called the paltry raffle of colony faction, they might then hope, from the presumption which men naturally have in their own ability and good fortune, to draw some of the great prizes which sometimes come from the wheel of the great state lottery of British politics. Unless this or some other method is fallen upon (and there seems to be none more obvious than this) of preserving the importance and of gratifying the ambition of the leading men of America, it is not very probable that they will ever voluntarily submit to us."

The plan here proposed is limited in its terms to the British colonies of North America; but, as the reasons advanced in support of it are general, they would apply to every dependency which has made any considerable progress in civilization, or possesses popular securities against misgovernment.

It may be objected to this plan, that any colony to which it might be applied, would cease to be a dependency; since its inhabitants would become, in common with the inhabitants of the dominant country, directly subject to the supreme government. Consequently, the plan would solve the difficulty respecting the best constitution of a subordinate government, by abolishing the subordinate government altogether. The change in the relations of the dominant country and the dependency which would be affected by its adoption, would resemble that which would have been produced in the relations of England and Ireland by the incorporating union of 1800, if the events of 1782 had not occurred. Adam

Smith, indeed, seems to have perceived that such would be the effect of his proposal. For having remarked in a subsequent part of his work, that "by the union with England the middling and inferior ranks of people in Scotland gained a complete deliverance from the power of an aristocracy which had always before oppressed them," and that, "by an union with Great Britain the greater part of the people of all ranks in Ireland would gain an equally complete deliverance from a much more oppressive aristocracy," and having added "that no oppressive aristocracy has ever prevailed in the colonies;" he proceeds as follows: "Even they, however, would in point of happiness and tranquillity gain considerably by AN UNION WITH GREAT BRITAIN.* It would at least deliver them from those rancorous and virulent factions which are inseparable from small democracies, and which have so frequently divided the affections of their people and disturbed the tranquillity of their governments, in their form so nearly democratical. In the case of a total separation from Great Britain, which, unless prevented by an union of this kind, seems very likely to take place, those factions would be ten times more virulent than ever."

But the main objection to the plan (an objection which its author has not noticed) lies in the distance of those colonies from England. Where a supreme government is prevented by distance (or by any other cause) from communicating rapidly with any of its territories, it is necessary that the distant territory should be governed as a dependency. Consequently, even if the colonies had sent representatives to Parliament, agreeably to the plan recommended by Adam Smith, they must still have been governed as dependencies: that is, by subordinate governments completely organized, and possessing every power consistent with their subordinate character. But since the colonies would still have been governed as dependencies, they would still have thought themselves in need of popular securities against the executive departments of their local governments. They would probably have thought their voice in the British Parliament an

*Note that he speaks of "the 'UNION' of Great Britain with her colonies," not the "FEDERATION."—ED.

insufficient security against those departments, and have insisted on the continuance of the securities which the ancient constitutions of their governments had afforded them. Consequently, the local representative assemblies would probably have continued, and would probably have retained substantially their former structures and powers. The plan, therefore, would have failed. It would not have obviated the embarrassments arising to the mother country from those assemblies, but would rather have brought upon her other embarrassments arising from the representatives of the colonies in her own legislature.*

It seems desirable, however, that a dependency should have a representative agent in the dominant country to watch over the interests of his constituents, and serve as an organ of communication between them and the supreme government; and the mode of determining the functions of such an agent, so as to enable the dependency to exercise a useful influence over the supreme government, is a question which deserves more attention than it has received. The agents who have been appointed by the colonial dependencies of England have been intended to serve this purpose; but their functions have been so ill-defined, and their official powers so limited, that they have only partially accomplished the ends of their appointment. During the reign of Charles V. there existed in Spain a high council formed of members who represented the several provinces of the monarchy. There was one councillor for Sicily, one for Naples, one for Milan, one for Burgundy, one for the Netherlands, one for Aragon, and one for Castile. By these officers the interests of each European dependency of the Spanish

*Adam Smith's plan seems to have been framed mainly for the purpose of rendering possible the taxation of the colonies for the benefit of the general government of the empire. He was right in thinking that the existence of a subordinate government is the principle cause of the unwillingness of a dependency to contribute to the expenses of the dominant country. But the plan proposed by him would not be practicable, if it proceeded to the entire abolition of the subordinate government; and if a subordinate government were left standing, though with a diminished legislative activity, this would go far to defeat the main purpose of his recommendation.

monarchy were, to a certain extent, represented in the councils of the supreme government.

Although a dependency which has efficient popular securities against misgovernment cannot be kept completely in a state of practical dependence, an approach has been made in practice to the accomplishment of the purpose, by the plan which is briefly stated in the next paragraph.

The following is a short description of the position of a dependency which is governed by the dominant country agreeably to the plan in question. In respect of its relations to foreign countries, its practical dependence on the dominant country is complete. It is related amicably to every foreign country with which the dominant country is at peace. It is related hostilely to every foreign country with which the dominant country is at war; although it does not maintain a standing army or navy of its own, and is defended by the arms of the dominant country from foreign aggression or insult. The dominant country, moreover, regulates the commercial intercourse of the dependency with other independent states. In respect, however, of its internal affairs, the condition of the dependency approaches closely to a state of practical independence. The dominant country determines the form of the government by which the dependency is immediately governed. But for other purposes, the dominant country interferes as little as possible with the internal concerns of the dependency; and especially the dominant country does not require the dependency to contribute to the expenses of the general government of the empire.

It has been found in practice, that the embarrassments which are naturally brought upon the dominant country by popular institutions in the dependency may be partly obviated by the plan of government which is briefly stated in the preceding paragraph. The British American colonies, which now form the United States, were long governed in this manner; and until an attempt was made to govern them in another mode, their dependence on the mother country was not interrupted or disturbed.

But, though the plan in question partly obviates those embarrassments, it is not free from serious inconveniences.

In the first place, although the dominant country interferes as little as possible with the internal concerns of the dependency, occasions demanding its interference with those concerns will necessarily or naturally arise. For example, such occasions arose from the strong expression of public opinion in England against the continuation of slavery in the English West India islands, and the disorders consequent upon the conflict of the English and French races in Canada. And the question is now agitated, whether the disposition of waste lands in the English dependencies should be made under the direction of the supreme or the home government, or whether it should be left to the local government of the dependency. But, however sparingly and temperately the dominant country may interfere with the concerns of the dependency, its interferences will be regarded with jealousy and discontent by the people of the latter, and especially of the representative body which is the organ of their opinions and feelings. Although the measures of the dominant country may be in themselves advantageous to the dependency, they may be distasteful to the people, and more distasteful still to the representatives and leaders of the people, because they are imposed upon the dependency by another community.

In the next place, in every dependency which possesses popular securities against misgovernment, there is a popular political party; and the position and objects of this party, or of its leaders, are pregnant with embarrassments to the dominant country which the plan in question would not sufficiently obviate.

This popular party, however influential in the dependency, cannot obtain the complete direction of its government, since the power of directing that government resides ultimately in the government of the dominant country. This obstacle to their absolute ascendancy, the popular party naturally desires to overcome; and, as they cannot surmount it completely so long as the dependency is tied to the dominant country, they naturally desire, consciously or unconsciously, to render their country an independent

state. Accordingly, the consequences which are produced in an independent state by a growing tendency to popular institutions, are different from those which it produces in a dependency. While it usually resolves itself, in an independent state, into a struggle between different classes of the community, it naturally leads in a dependency to a struggle for independence. And thus, while the acquisition of additional power by a popular party in an independent state, naturally leads to peaceable concessions on the part of its opponents, the acquisition of such power by a popular party in a dependency is likely to lead to a mischievous, or, at the best, fruitless contest with the dominant country.

It may be remarked, moreover, that the administrative offices of the local government are commonly filled by persons who hold them permanently, and who are not appointed to them by the popular representative body, or in pursuance of its opinions and wishes. In a dependency, therefore, the leaders of the popular party are excluded from office; and in consequence of this exclusion, they are free from a powerful restraint by which they would be checked if a chance of office was before them. A main cause of the moderation which is sometimes evinced by a party in opposition, is their chance of being called to office. It restrains them from courting the public by proposing impracticable or pernicious measures; for, on their accession to office, they would naturally be compelled, by the necessity of preserving their public reputation and influence, to attempt the execution of the public purposes which they now profess to entertain.

In order to prevent the embarrassments arising to the dominant country from the position and objects of the popular party in the dependency, the supreme government might fill the offices of the local government with persons acceptable to the body by which the dependency is represented. In consequence, however, of this arrangement, all the officers of the local government would be virtually appointed by the representative body, and not by the supreme government or by the home department of the subordinate government; and, consequently, the arrangement would render that body com-

plete masters of the local government, and virtually emancipate the dependency from its dependence on the dominant country.

It is manifest, therefore, that the inconveniences arising to the dominant country from popular institutions in the dependency would not be completely obviated by the plan which we have last stated. In respect, at least, of its internal affairs, a dependency governed agreeably to that plan would be merely dependent in name.

If a dependency be already independent in effect, or it be expedient (for any other reason) that the dominant country should treat it as if it were, it ought to be governed on the plan which we have just examined, or on some plan of a similar purport and tendency. It may be expedient, however, that a dependency which is dependent in effect, and which it will be necessary to keep as far as possible in that condition, should receive popular securities against misgovernment; and, on the occurrence of such a case, it would be necessary to consider the means of conciliating those securities with the virtual subjection of the dependency to the dominant country. Though these conflicting objects could not be perfectly reconciled, an approach might possibly be made to the attainment of the purpose, by means of the precautions and measures which we shall now venture to suggest.

In the first place, the constitution of the local government ought not to be conceived in a form, or its provisions expressed in terms, by which the inhabitants of the dependency might be naturally led to suppose their country a virtually independent state.

The English government, in framing the political institutions of its dependencies, has not been sufficiently careful to give them such a form as might suggest the idea of their subordinate character. So far, indeed, has it been from observing this caution, that it has formed them after the model of the supreme government, and has acquiesced in the use of forms and language by the legislature of the dependency, which seem to imply that its government was co-ordinate with, and not subordinate to, the government of the dominant country.

The following passages, extracted from books of authority, which describe the form of the subordinate governments in the English dependencies in North America and the West Indies, will show the extent to which the error adverted to was likely to be created or increased by the neglect of the supreme government to observe this precaution.

"The governor, council, and assembly in every American colony," says Stokes, "is a subordinate legislature, subject to the control of the king and Parliament, who are supreme over all the British Empire. The governor, as the king's representative, is the first branch of this subordinate legislature, and hath the sole power of convening, adjourning, proroguing, and dissolving the general assembly. . . . The Council, or (as it is called) Upper House of Assembly, is an humble imitation of the House of Lords. The Assembly, or (as it is called in most of the colonies on the continent) Commons' House of Assembly, represents the people at large, and is chosen by them. . . . The proceedings of the Houses of Assembly in the colonies are conducted, and their journals kept, in a manner much conformed to those of the two Houses of Parliament."

"The British establishments in the West Indies," says Bryan Edwards, "are commonly termed King's Governments, . . . and from what has been stated in some preceding parts of this work, the reader must have observed how very nearly their internal constitutions conform to that of the mother country. Their different orders of judicature are exactly like those of England, and their legislatures in general respectively consist of three distinct branches, *i. e.*, a governor representing the Crown; a Council or Upper House; and a body of delegates representing the people at large." . . . "Provincial parliaments, or colonial assemblies (it matters not by what name they are called), being thus established and recognized, we shall find that in their formation, mode of proceeding, and extent of jurisdiction within their own circle, they have constantly copied, and are required to copy, as nearly as circumstances will permit, the example of the Parliament of Great

Britain. The freeholders are assembled in each town or parish respectively by the king's writ; their suffrages are taken by an officer of the Crown; and the persons selected are afterwards commanded, by royal proclamation, to meet together at a certain time and place in the proclamation named, to frame statutes and ordinances for the public safety. When met, the oaths of allegiance, etc., are administered unto each of them, and a speaker being chosen and approved, the session opens by a speech from the king's representative. The Assembly then proceeds as a Grand Provincial Inquest to hear grievances, and to correct such public abuses as are not cognizable before inferior tribunals."

Mr. Long, in his history of Jamaica, gives the following account of the government of that island: "In pursuance of the royal promise, and as soon as the colony was numerous and considerable enough to make it an object for civil government, a civil government was instituted, in most respects the same as what now exists. The king could not give any other form of civil government or laws than those of England, and accordingly, the form of government here resembles that of England almost as nearly as the condition of a dependent colony can be brought to resemble that of its mother country, which is a great and independent empire. Here, as in England, we have coroners, constables, and justices of the peace. We have a Court of Common Pleas, Court of Exchequer, and Court of King's Bench. We have grand and petty juries. We have a Court of Chancery, a Court of Ordinary, for the probate of wills and granting of administrations; a Court of Admiralty, for the trial of offenses on the high seas, and other business, civil and maritime; Courts of Quarter Session, vestries, and in time of law martial, a Military Court. . . . The coroner is elected by the people, the constables are appointed by the justices of the peace, and the judges of all the courts act by authority of the king's commission, under the broad seal of the island. The different orders of judicature are then exactly like those in England, subsisting by the same authority, and are instituted for the same purposes. There is somewhat the same resemblance preserved in the forms

of our legislature. It is composed of three estates, of which the governor, as representing the king, is head. Having no order of nobility here, the place of a House of Peers is supplied by a council of twelve gentlemen appointed by the king, which, in the system of our legislature, forms the Upper House. The Lower House is composed, as in Britain, of the representatives of the people elected by the freeholders." "The Assembly," Mr. Long afterward adds, "consider their privileges as derived to them from their constituents, and that they are not concessions from the Crown, but the right and inheritance of the people, and that the privileges which they claim are absolutely necessary to support their own proper authority, and to give the people of the colony that protection against arbitrary power which nothing but a free and independent assembly can give. Their right they found on this presumption, that the Assembly of this island holds the same rank in the system of their constitution as a British House of Commons does in that of the mother country."

Mr. Haliburton describes the Constitution of the House of Assembly of Nova Scotia in the following terms: "The Assembly resembles the Lower House of Parliament in its formation, mode of procedure, and power within its jurisdiction, as far as the different circumstances of the country permit. The freeholders are assembled, in the several counties and towns entitled to representation by the king's writ, and their suffrages taken by the sheriff. The members thus elected are required by the governor to meet at Halifax, the capital of the province, on a certain day, when the usual oaths being administered, and a speaker chosen and approved, the session is opened by a speech from the person administering the government, in imitation of that usually delivered from the throne, in which, after adverting to the state of the province, he calls their attention to such local subjects as seem to require their immediate consideration."

In several of the British colonies the local subordinate government was originally not a tripartite body, but consisted only of the governor and a House of Assembly. In progress of time, however, the executive council of

the governor was allowed to acquire a legislative power, at first jointly with the governor, and afterward seperately; and it began to occupy a place in the subordinate government, which was considered analogous to that of the House of Lords in the supreme government. Mr. Haliburton makes the following remarks on the Council of Nova Scotia: "As an Upper House, their proceedings, though conducted with closed doors, are formal, and in imitation of the usage of the House of Lords; and although they cannot vote by proxy, they may enter the reasons of their dissent on their journals. Dissimilar as this body is in many important particulars to the House of Lords, any nearer approach to the original appears, from the state of the country, to be very difficult."

The principles which have been just stated were fully recognized and adopted by the British Parliament in remodeling the constitution of Canada in 1791. A tripartite legislature was established in both provinces, avowedly in imitation of the tripartite legislature of Great Britain; and the governor was expressly enabled to give his consent to acts of the legislature, and such consent was final unless the act was disallowed by the crown within two years.

Moreover, according to the former practice in several of the English colonies, an act of the local legislature was in force as soon as it received the assent of the governor, without its being remitted to England for the approbation of the crown; at the present day, a legislative measure which has been passed by a local legislature of a British colony is called an act (and not a bill) when it is remitted to England for the assent of the crown.

Such having been the course of the dominant country with respect to the matter in question, it was natural that its conduct should diffuse an opinion among the inhabitants of its dependencies, that their governments were co-ordinate with its own; it was natural, to use the words of Adam Smith, that the people of the colonies should be fond of calling their assemblies Parliaments, and should consider them as equal in authority to the Parliament of Great Britain.

There is a constant tendency, from inevitable causes, to a misconception of the character and powers of a subordinate government. The relation of a subordinate to a supreme government is a complicated relation, which the people both of the dominant country and the dependency are likely to misunderstand, and the incorrect notions entertained by either party are likely to give rise to unfounded expectations and to practical errors in their political conduct. It is the duty of the government of the dominant country to do everything in its power to diffuse correct opinions and to dispel errors respecting its political relations with the dependency, and still more to avoid creating an error on this subject; since, in case of any collision between the dominant country and the dependency, which an error on this subject is likely to produce, the weaker party, that is the dependency, can scarcely fail to be the chief sufferer. Unless the dominant country should be prepared to concede virtual independence, it ought carefully to avoid encouraging the people of the dependency to advance pretensions which nothing short of independence can satisfy. If a dominant country grants to a dependency popular institutions, and professes to allow it to exercise self-government without being prepared to treat it as virtually independent, the dominant country by such conduct only mocks its dependency with the semblance of political institutions without their reality. It is no genuine concession to grant to a dependency the names and forms and machinery of popular institutions, unless the dominant country will permit those institutions to bear the meaning which they possess in an independent community; nor do such apparent concessions produce any benefit to the dependency, but, on the contrary, they sow the seeds of political dissensions, and perhaps of insurrections and wars, which would not otherwise arise.

In the next place, a dominant country ought not, by neglecting a dependency, to allow it to form habits of practical independence, unless it be prepared to follow this system to its legitimate consequences, and to recognize formally the independent government which has grown up through its sufferance.

If a dependent colony be neglected during its youth by the dominant mother country, it enjoys the advantages of practical independence which that neglect implies, and, being weak and small, it is not tempted to assert its independence; it feels the need of protection by the mother country, and does not as yet think of entire separation from it. When it has grown older and stronger its wealth naturally suggests to the mother country the policy of requiring it to contribute to the expenses of the general government. But if it has been neglected up to that time by the mother country, it will probably proceed to assert its independence, and the mother country must either resort to coercive measures or yield to its pretensions. The history of the Anglo-American colonies makes it probable that a mother country will neglect a colony while it is weak and needs assistance, and will attempt to tax it when it has become strong and is likely to resist.*

The neglect of a dependency by the dominant country is a snare and a deceit to the people of the former; it lures them on to their destruction, unless the dominant country should be prepared to grant them the independence which they will infallibly seek to obtain.

For the purpose of preventing such neglect, and the mischievous consequences which it entails, the dominant country ought to legislate for the dependency, whenever such legislation would be useful to the latter.

It will appear from preceding parts of this Essay, that the occasions upon which the supreme government can legislate directly for a dependency to the advantage of the latter, are not numerous. There are, however, cases in which such legislation is expedient. In every such case the supreme government ought to legislate for the dependency, not merely on account of the utility resulting from the particular act of legislation, but also in order to remind the dependency of its dependence, and to avoid the neglect of the dependency with the mischievous consequences which that neglect involves.

* The colonial policy of Great Britain in the last fifty years stands out in pleasing contrast to what is here represented to have been her former policy.— Ed.

But, for the purpose of accomplishing this object, all formal obstacles in the dominant country to such legislation ought, as far as possible, to be removed.

It often happens that the supreme government, owing to its form being popular, or the multiplicity of the demands upon its attention, is unable to legislate directly for a dependency, except upon extraordinary occasions. In this state of things it is expedient that the legislation for the dependency which proceeds from the dominant country should be conducted by some subordinate authority in it. But the subordinate authority best fitted for this purpose is that part of the subordinate government of the dependency which is placed in the dominant country. The legislation by such a subordinate authority and the legislation of the supreme government itself would, it is manifest, equally emanate from authorities representing the opinions and interests of the dominant country.

In applying this remark to the English dependencies, we find that the Crown, which forms that part of the subordinate government of a dependency which is placed in the dominant country, can legislate (by orders in council or by instructions through the secretary of state) for a crown colony; but that the Crown cannot legislate for a dependency in which the local government is partly composed of a House of Assembly or other body co-ordinate with itself.

The rule which prevents the English Crown from legislating for a dependency in which the form of the local subordinate government is popular does not lead to inconvenient consequences, provided that the dependency be allowed to manage its own internal affairs and to enjoy a virtual independence. But the application of this rule to dependencies to which England does not intend to allow a virtual independence is inconvenient, since it is impossible for Parliament to legislate frequently for a single dependency; and therefore, when a necessity arises for the legislative interposition of the dominant country, it is likely that the interposition will come at too late a period, or will be made otherwise under unfavorable circumstances. Accordingly, in a dependency belonging to

the latter class, it seems expedient that the House of Assembly should be considered mainly as a check upon the legislative powers of the governor and his council; and that the Crown should possess a power of legislating for such a dependency in the same manner as it legislates for a crown colony.

The following reasons may be alleged in support of this conclusion:

If England is to legislate at all respecting the internal affairs of any of its dependencies, the possession of this power by the Crown would, in general, enable it to legislate under the most favorable circumstances. Since the Crown would act upon the advice of the department peculiarly charged with the affairs of the dependency to which the law would relate, its interposition would probably be made at a sufficiently early time to prevent the various evils arising from delay. The persons so advising the Crown would be exempt from local interests and passions, and would probably not be influenced materially by any political party in the dependency. They would, moreover, be directly responsible to Parliament for the advice so given by them, and their responsibility might be increased if every order in council, or other legislative act issued by the Crown to a dependency, were presented to Parliament, together with a written statement of the purpose and grounds of the measure.

The concession of a power of this kind to the Crown would not diminish the legislative power of Parliament over the dependencies. The Crown would act by powers expressly delegated to it by Parliament. Now when a supreme legislature delegates a power of subordinate legislation respecting a certain subject, it does not diminish its own power of legislating respecting that subject. An order in council affecting a dependency might be repealed or modified by Parliament as soon as it was issued; and no provision of an order in council would be valid which was inconsistent with an act of Parliament.

It may be objected to legislation for a dependency by orders in council that they are advised by persons who

are not the chosen representatives of the people of the dependency, and over whom the latter exercise no direct influence. But this objection equally applies to legislation for a dependency by Parliament, since the people of a dependency are not directly represented in Parliament, and it, in fact, involves a claim inconsistent with a state of dependence.

It may be remarked that the Secretary of State for the Colonial Department and his official assistants know more about the condition and interests of the British dependencies, than Parliament or the public, inasmuch as their attention is more exclusively directed to the subject. It is likewise probable that they will care more for the interests of the dependencies committed to their charge, on account of their being under a responsibility to public opinion, by which Parliament is not affected in an equal degree, and from which the public at large is nearly exempt.

The preceding remarks have been intended to show, that a dependency which is likely to remain virtually dependent for a considerable time ought not to be placed under popular institutions of such a character as will probably tempt the people to aim at practical independence; that a popularly elected body and other popular institutions are expedient as a check and an assistance to the governor and his council or other local executive authorities; but that facilities should be given to the home authorities to legislate for the dependency without a recurrence to the authority of the supreme government. These ends may be best attained, with respect to an English dependency having popular securities against misgovernment, by requiring the consent of a popularly elected body in a dependency to every act of the local subordinate government, by establishing in it a liberty of the press and popular municipal bodies, and, at the same time, by granting to the Crown a power of legislating for the dependency without the concurrence of the local popular body.

Before we conclude the series of remarks upon the means of reconciling popular institutions in a dependency with its virtual dependence, we will advert to a

plan which might be tried for giving to a dependency many of the advantages resulting from popular institutions, without exposing it or the dominant country to their countervailing disadvantages.

This plan consists in subjecting the governor (or other head of the local subordinate government) to the control of a council representing the opinions and feelings of the more intelligent portion of the people, but not possessing any legislative or administrative powers strictly so called. The governor would be bound to consult this council upon every legislative measure; but neither he nor the home department of the subordinate government would be concluded by its opinion. It would have the powers of petitioning the governor to introduce any law, and of dissenting from any law proposed by him, or of suggesting amendments in it; but the governor would be at liberty to refuse the request or reject the advice. In case, however, he decided against such request or advice he would be bound to report to the home authorities the grounds of his decision.

The establishment of such a council as we have just stated would possess the following advantages. By concentrating the opinion of the intelligent and proprietary classes of the dependency upon its government, it would increase the influence of the most enlightened public opinion in the dependency upon the acts of its immediate rulers; and also (though in a less degree) upon those of the home authorities and even of the supreme government. It would likewise provide an authentic organ through which the local government and the home authorities could easily learn that opinion. Without such a council the home authorities have no means of learning authentically the opinions and feelings of the more intelligent part of the people, in a dependency whose local government is not controlled by a representative body. Accordingly, when a complaint upon any political matter is made by any of the inhabitants of such a dependency, the home authorities run the risk of falling into serious error, from their necessary ignorance of the characters and purposes of the complainants. If they entertain the complaint, they may do an injustice to the local

government, and may even lower its credit and weaken its authority; if they do not entertain the complaint, they may refuse redress of a real grievance, and create an opinion that the authorities in the dominant country are deaf to the prayers of the dependency.

Such a council, as representing the more intelligent classes of the dependency, and as destitute of legislative and executive powers, would probably conduct itself, in general, with discretion and forbearance. Instead, like a representative body possessing legislative powers, of prepossessing the dominant country against the dependency by a disingenuous and indiscriminating opposition to the measures of the local government, it would rather, by the general moderation of its proceedings, create a favorable disposition toward the dependency in the government and public of the dominant country, upon which (especially if it be condemned by its weakness to dependence) it must ultimately and permanently rely for obtaining a good administration of its political concerns. But although such a council would possess no proper legislative or executive powers, and would therefore be unable to arrest the machine of government, it would, by giving the people of the dependency an authentic legal organ of their political opinions and wishes, and affording them a considerable security against the misrule of the local and even of the home authorities, tend to conciliate their affections toward the government, and to mitigate the discontent which they would naturally feel if they were excluded from taking any part, or having any voice, in the management of their own political affairs.

It may be objected to the plan just described, that such a council, though nominally destitute of legislative powers, would, in a short time, come to possess them practically; since the governor and the home authorities would be afraid or unwilling to act in opposition to its opinion, and would therefore treat it as if it were virtually a co-ordinate authority and not a merely consultative body. But such a council could only acquire a legislative power by the sufferance of the governor and the home authorities, inasmuch as the subordinate government could

legislate without its consent; and the known inconveniences of a representative body in a dependency possessing a legislative power would afford a strong inducement to the members of the subordinate government to assert constantly, and occasionally to exercise, their exclusive power. It may likewise be objected to the plan, that such a council would afford a center in which the discontent of the dependency might be collected, and round which it could organize itself. To this objection it may be answered that, supposing the people of the dependency to be discontented with their government, their discontent will find a more dangerous vent in voluntary and probably illegal associations, if it has no legitimate and constitutional organ. It may be added, that if the people of the dependency are generally dissatisfied with their government, and if they are likely to resist its authority by force with any reasonable prospect of success, the dependency can scarcely be considered as belonging to those which the dominant country ought to retain in a state of virtual dependence.

## CHAPTER XI.

### How a Dependency May Cease to Exist as Such, or May Lose Its Distinctive Character.

I have attempted in the first five chapters to explain the nature of a dependency; and I have endeavored in the following chapters to state the advantages and disadvantages which arise to the dominant country and the dependency from the relation of supremacy and dependence by which they are connected. I shall consider, in conclusion, how a dependency may cease to exist as such; or how it may lose the character by which it is distinguished from an independent state, and from a dependent community directly subject to the supreme government.

There are two modes in which a dependency may lose its distinctive character: first, it may become directly subject to the supreme government of the country on which it is dependent (or to the supreme government of some other independent country); and, secondly, it may become an independent state. As a dependency is a territory governed by an immediate government of a peculiar class or description, an essential alteration in a dependency, considered as such, supposes that its immediate government is destroyed or essentially altered. Consequently, if the immediate government survives, on either of the two events which we have just supposed it undergoes an essential change. On the first of those events it remains subordinate, but loses its complete organization: on the second, it retains its complete organization, but becomes supreme.

A dependency cannot lose its distinctive character in the first of these modes, unless the dependent territory be so near the dominant country that the latter may rule it without the interposition of a subordinate government. When a dependency is so situated, the supreme

government may incorporate the dependency with the parts of its dominions which it governs directly. For example, in consequence of the concession made by the Romans in the Social war, the Italian communities were converted from dependencies into integral portions of the territory directly subject to the sovereign government of the Roman republic. Their citizens were no longer limited to the right of voting in a subordinate local assembly, but obtained a vote in the supreme assembly of the citizens at Rome. The union of Ireland with Great Britain in 1800 may be considered as an example of the same change; inasmuch as Ireland continued to be dependent in fact until the union, though it had become nominally and legally independent from the year 1782. Since the union, although the practice of sending a viceroy to Ireland has been retained, the Irish government has lost its former completeness and separateness, and the country is no longer a dependency. So, if it were deemed expedient, Guernsey and Jersey, with the other Channel islands, and the Isle of Man, might be deprived of their character of dependencies, and be governed directly by the English government, like the other small islands adjacent to Great Britain.

Adverting to the second mode in which a dependency may lose its distinctive character, we will consider the various ways in which it may become an independent state.

1. A dependency may become an independent state by a successful revolt of the local subordinate government from the supreme government; or by a successful revolt of the people of the dependency from both governments.

In the first case, the revolt may amount to little more than a refusal of the local subordinate government to obey the commands of the supreme government; the relations of the people of the dependency to the former government remaining unchanged. It has been remarked, in previous parts of this essay, that the nature of a subordinate government, and the ordinary temper of the inhabitants of a dependency, afford considerable facilities for the success of such a revolt; and that the dependencies of half civilized countries have often become

independent in this manner. It may be remarked, moreover, that the revolt of the English colonies in North America was substantially a revolt of the local governments; for the political institutions of every colony were so popular, that the defection of the mass of its inhabitants implied the defection of the body in whose hands the local government was placed. Accordingly, the relations of the insurgent colonists to their local governments were not substantially changed by the success of the insurrection; the political institutions which the colonies severally possessed, while they were dependent upon England, being the basis of the several states' governments which they established after they had made themselves independent.

Of a successful revolt of the people of a dependency from the local and supreme governments, the revolt of the Spanish colonies in South America is an example; for, in none of those colonies was the local government in the hands of the colonists, or of any considerable portion of them.

The complete organization of its immediate government gives to a dependency a great facility for establishing its independence by a revolt. In that event the structure of the subordinate government, and even the persons of whom it is composed, may remain unchanged; and the people may yield to it as a supreme government, the obedience which they paid to it in its subordinate character. But a country immediately subject to a supreme government has no such facility for bringing about a revolution. It has no subordinate government completely organized; and on revolting from its supreme government, it must frame a new government to meet the exigencies of the occasion. Thus, if the local government of Egypt established its independence, it probably would undergo no further change than the severance of the slight connection which binds it to the government of the porte. But when Belgium, which was an integral part of the kingdom of the Netherlands, separated itself from Holland, it was compelled to create a new government; a work which it accomplished by establishing a constitution formed of a king and two

legislative chambers, and by placing a prince of a foreign family on the newly erected throne.

Where the people of a dependency, who have been excluded from all share in the subordinate government, revolt from their subordinate as well as their supreme rulers, their political institutions may be so nearly dissolved that the creation of a new government may become necessary. Such was the origin of the recently created kingdom of Greece, which was not founded upon the Turkish provincial government, but was formed out of new elements.

The revolt of the Maltese from the French government, in 1798, affords a parallel to the case to which we have just adverted. The government of Malta resided in the Order of St. John when the island was taken from them by the French; but, on the expulsion of the order, the island became a part of the French dominions and was governed as a dependency of France. As the government of the order was dissolved on their expulsion, the government which the French established in its place was the only government in the island at the time of the revolt. Consequently, the Maltese insurgents who shut up the French in Valletta, and occupied the open country, were compelled to create a government formed of the leaders of the insurrection; and this government, hastily and rudely run up to meet a pressing exigency, administered the part of the island not in the possession of the French, till the French in Valletta surrendered the place to the English.

The difficulty of forming, at the moment of the transition, new political institutions suited to the circumstances of the community, naturally determines a dependency which passes from dependence to independence, to retain its subordinate government without any other changes than those which the transition renders inevitable. The difficulty is clearly shown by the nature of the common government, which, at the close of the war of independence, the revolted English colonies in North America substituted for the common authority of the mother country. At the close of the war, every colony was virtually an independent state, since it possessed a govern-

ment of its own, which, though formerly subordinate, had become substantially sovereign. The several colonies, therefore, were bound together by no other tie than the loose confederacy which they had hastily formed for the limited purpose of conducting the war against England. Through the influence of Washington and other leading statesmen, this confederacy of independent states was converted into a federal state; the several states retaining their several governments, but submitting to a common government invested with specified powers. The limited extent of the powers given to the common government, and the indefinite extent of the powers reserved by the several governments, are certainly important defects in the political system of the United States; threatening to bring about a disruption or dissolution of their union,* and involving the federal state, which arises from their union, in wars or disputes with other independent communities. But the prejudices and interests, which, in each of the revolted colonies, supported the powers of its peculiar government, would have opposed invincible obstacles to a perfect fusion of those colonies into one independent state; and, instead of wondering that such a fusion was not accomplished by Washington and his coadjutors, we should rather admire the genius and wisdom which enabled them to approach so closely to that unattainable object.

2. A dependency may become an independent state, in consequence of the dominant country voluntarily relinquishing its supremacy.

Adam Smith is of opinion that no dominant country will ever voluntarily relinquish its power over a dependency. "To propose," he says, "that Great Britain should voluntarily give up all authority over her colonies, and leave them to elect their own magistrates, to enact their own laws, and to make peace and war, as they might think proper, would be to propose such a measure as never was, and never will be, adopted by any nation in the world. No nation ever voluntarily gave up the dominion of any province, how troublesome soever it might

* This passage has been since borne out by the great Civil War in America.—Ed.

be to govern it, and how small soever the revenue which it afforded might be in proportion to the expense which it occasioned. Such sacrifices, though they might frequently be agreeable to the interest, are always mortifying to the pride of every nation; and, what is perhaps of still greater consequence, they are always contrary to the private interest of the governing part of it, who would thereby be deprived of the disposal of many places of trust and profit, of many opportunities of acquiring wealth and distinction, which the possession of the most turbulent, and, to the great body of the people, the most unprofitable province seldom fails to afford. The most visionary enthusiasts would scarce be capable of proposing such a measure, with any serious hopes at least of its ever being adopted." *

It is true that there has not been hitherto any instance of a dependency becoming independent by the voluntary act of the dominant country.† The Greek colonies form no exception to Adam Smith's remark, since they were independent from their first establishment; and, therefore, the mother country possessed no power over them, which it could subsequently relinquish. The most remarkable changes from dependence to independence have been produced by insurrection against the dominant country; and the dominant country has not consented to recognize the independence of the formerly dependent communities, until it had exhausted all its means of reducing them to obedience. Examples are furnished by the Swiss Confederacy, the United Provinces of the Netherlands, the United States of America, and the various independent states which have been formed out of the

*Pt. III, Adam Smith's "Essay on Colonies."

† The cession of the Ionian Islands, and the retrocession of the Transvaal, may be given as instances of "a dependency becoming independent by the voluntary act of the dominant country." But as regards the former it may be noticed (1) that they were already formally independent (2) that they became on cession an integral part of another state; and, as regards the latter (1) that the cession was preceded by a successful revolt, though the dominant country did not "exhaust all its means of reducing" the Boers "to obedience," (2) that Great Britain, while giving back independence, retained a vague right of suzerainty.—ED.

revolted Spanish and Portuguese colonies in North and South America.

It is, however, conceivable that, in a given case, the dominant country might perceive that it derives no benefit from the possession of a dependency, and that the dependency is able and willing to form an independent state; and that, consequently, a dominant country might abandon its authority over a dependency for want of a sufficient inducement to retain it. A dominant country might, for example, see that the dependency contributes nothing to its military defense, or to the expenses of the supreme government; that it adds nothing, as a dependency, to the productive resources or commercial facilities of the dominant country; that it is a constant source of expense to the supreme government, is likely to engender many economical evils, and may even involve the dominant country in war on its account. It might, moreover, perceive that the dependency is sufficiently populous and wealthy to form an independent state, and that the people of the dependency desire independence.

If a dominant country understood the true nature of the advantages arising from the relation of supremacy and dependence to the related communities, it would voluntarily recognize the legal independence of such of its own dependencies as were fit for independence; it would, by its political arrangements, study to prepare for independence those which were still unable to stand alone; and it would seek to promote colonization for the purpose of extending its trade rather than its empire, and without attempting to maintain the dependence of its colonies beyond the time when they need its protection.

The practical difficulties and inconveniences inherent in the government of dependencies, which have been stated in preceding chapters, are necessary or natural consequences of the relation of supremacy and dependence, and of the imperfect though necessary expedient of a subordinate government. Now if a dependency is considered as in training for ultimate independence, the difficulties naturally incident to its government, if they do not vanish, are nevertheless greatly reduced. If a

dependency were so considered, the free and forcible action of its local institutions would be encouraged as an unmixed good, not discouraged as a source of strife with the dominant country, and of vain resistance to its power; and all precautions on the part of the supreme government for the purpose of preventing the people of the dependency from regarding their subordinate government as virtually supreme, would be needless. If a dependency be distant, if its territory be large, and its population numerous; and if the powers of its local subordinate government reside, to a considerable extent, in a body chosen by the inhabitants it is difficult for the dominant country to prevent it from forming habits and opinions which are scarcely consistent with its virtual dependence. But if such a dependency be regarded as in training for independence, the local popular institutions leading to, and implying, self-government, may be allowed to have free play, and the interferences of the dominant country with the political affairs of the country may cease almost insensibly.

Admitting the impossibility of the prevailing opinions concerning the advantages of extensive empire being so far modified as to permit a dominant country to take such a view of its political relations with its dependencies as that now indicated, it is proved by the example of England* that the dominant country may concede virtual independence to a dependency, by establishing in it a system of popular self-government, and by abstaining almost constantly from any interference with its internal affairs.

Such a relation of the dominant country and the dependency as has been described in the preceding paragraph seems, however, scarcely consistent with the duration of the dependence of the latter for any considerable period. At all events the long duration of its dependence under such circumstances implies as much moderation and rationality on both sides as would be implied on the side of the dominant country by a voluntary cession of its authority over the dependency.

*The reader must be again reminded that this refers to the original colonies of Great Britain, not to the present self-governing colonies.—Ed.

It is obvious to remark, that the dominant country ought not to abandon its authority over a dependency, unless the people of the dependency consent to the cession, and are capable of forming an independent community. It is bound, morally, not to throw off a helpless dependency, although the possession of it should promise no advantage to itself.

We will close the present chapter with some remarks on a case not falling strictly under the above heads, but related by a close analogy to the subject under consideration.

It may happen that the inhabitants of a territory immediately subject to the supreme government desire to form themselves into a separate community, independent or dependent, not by a violent insurrection against that government, but with its consent and by peaceable means. Examples of this state of things are afforded by Scotland during the first half of the last century, by Sicily during the revolution of 1820, and by Ireland at the present time.

The demand of the advocates of the repeal of the Act of Union between Great Britain and Ireland appears to be, that Ireland should be placed in the same political relation with Great Britain as that which existed immediately before the Union.

Ireland (as we have already seen) was both legally and in fact a dependency of England or Great Britain until the year 1782. In that year the Parliament of Great Britain surrendered its supremacy over Ireland; but the King of Great Britain continued to be, as such, King of Ireland. The change which took place at this time in the political relations of Great Britain and Ireland was, therefore, of the following nature. Before the year 1782 the King of Great Britain was, as a constituent part of the Parliament of Great Britain, a member of the sovereign government of Ireland. Before the same year, the King of Great Britain was, as such likewise, King of Ireland; and as King of Ireland, he was a constituent part, together with the Irish Houses of Parliament, of the subordinate government of Ireland. Before this year, therefore, the political relations between Great

Britain and Ireland closely resembled those between Great Britain and a British dependency whose subordinate government consists of the Crown, with a legislative council appointed by the Crown, and a House of Assembly elected by the inhabitants; with this difference, however, that a dependency of this sort is not considered a separate kingdom, annexed to the British Crown. But after the year 1782, the body which was sovereign in Great Britain ceased to be sovereign in Ireland: the sovereign government of Ireland consisted of the Crown, with the Irish Houses of Parliament; and the only political connection between the two countries was, that the King of Great Britain was also King of Ireland, the rules of succession to the two crowns being, moreover, so long as they both might remain unaltered, identical. The political relation between Great Britain and Ireland during the eighteen years following 1782 was similar to the political relation between Hanover and the United Kingdom during the reign of William IV.; with this exception, that the rules of succession to the two crowns were identical in the case of Great Britain and Ireland, and not identical in the case of the United Kingdom and Hanover.

But although Ireland ceased in 1782 to be legally and in form, it did not then cease to be, virtually and in fact, dependent upon Great Britain. The great body of the Irish people continued to be excluded from all effective participation in the exercise of political rights; the country was managed by a native party devoted to the English interest and to the maintenance of the connection with England: and, consequently, the government was substantially, though covertly, directed by English influence. Although the form of the Irish government was completely altered in regard to its relation with England, by the events of 1782, the extent of the indirect influence of England over it had not, before the union, been materially affected by that change.

Now it may be assumed that the advocates of a repeal of the Act of Union between Great Britain and Ireland do not wish to place Ireland in the same legal relation to Great Britain as that in which it stood prior to 1782, and

to make it a dependency of Great Britain. Their desire doubtless is, that the legal relation of Great Britain and Ireland should be restored to the state in which it was at the time of the union.

But although the legal relation which subsisted between Great Britain and Ireland at the time of the union might be restored, the general political relations subsisting between the two countries would necessarily be very different. The internal changes which have taken place in Ireland since 1800 have rendered it impossible that the bulk of the people should be excluded from the effective exercise of all political rights, and that the country should be governed by a merely English party. The Irish House of Commons would, if the Act of Union were repealed, be elected by constituencies not less popular than those by which the Irish members of the House of Commons of the United Kingdom are elected. An Irish House of Commons, so elected, could not fail to obtain the chief influence in the government of the country, and would, therefore, render Ireland, for some time at least, both legally and virtually an independent state. The power of the crown would, under these circumstances, be insufficient to render Ireland virtually dependent on Great Britain, or even to procure to Great Britain any sensible influence upon the proceedings of the Irish Parliament.

The natural relations of Ireland to Great Britain would, however, eventually secure to the government of the latter a considerable influence over that of the former island. The close proximity of their coasts, the identity of their languages, their close commercial relations, the ownership of land in Ireland by Englishmen, together with the superior wealth, power, and general importance of Great Britain, must ultimately lead to this result. The inconveniences which Ireland would suffer from becoming an independent state (such as the increased taxation necessary for maintaining a separate army and navy, and a separate body of representatives with foreign powers, and the loss of the free commercial intercourse with Great Britain and her dependencies) would conspire with many other causes to render a large body of the

Irish people dissatisfied with their government. It may, therefore, be reasonably doubted whether, if the Act of Union between Great Britain and Ireland were repealed, and the government of Ireland were restored to the state in which it existed immediately before the union, Ireland would long remain a virtually independent state.

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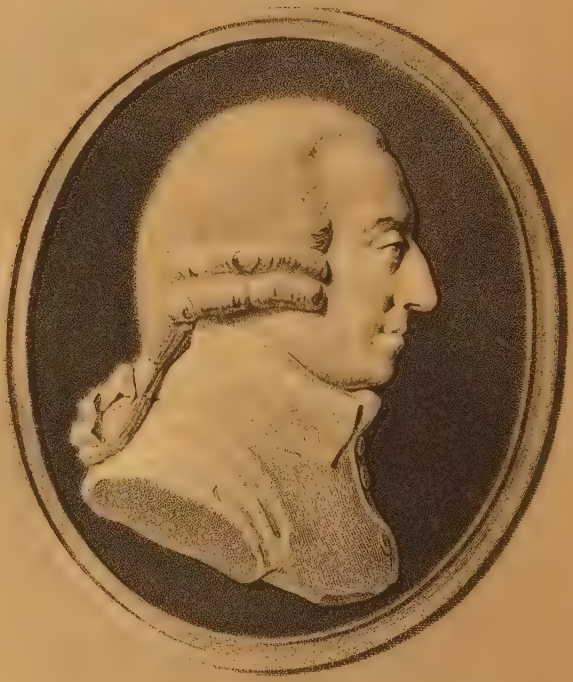

# ESSAY ON COLONIES

BY

ADAM SMITH

Author of "Wealth of Nations," Etc.

WITH AN INTRODUCTION BY

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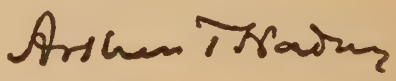
# INTRODUCTION

In every department of political economy except colonial policy, the English reader finds himself well supplied with material. But in this particular field good discussions are extremely rare. No English or American economist has devoted his time to a survey of the subject as Leroy-Beaulieu has done in France, or as other economists of scarcely less note have done in Holland, in Italy, and in Germany. We have excellent monographs dealing with particular points, but nothing except Adam Smith's "Essay on Colonies" which gives an introductory view of the principles governing the whole theme.

The study of this work has peculiar timeliness at the present day; partly because America, in common with other nations of the world, seems to be entering on a policy of colonial empire, but still more because the conditions of public thought on this subject are very much like those of the time when Adam Smith wrote. This may seem a strange statement to make, in view of the multitude of events which have occurred in the generations which have intervened. It is, however, a fact that in this respect the first years of the twentieth century are like the closing years of the eighteenth, and somewhat unlike most of the nineteenth. The pendulum of economic change during the eighteenth century was swinging away from restriction, and in the direction of a let-alone policy. The triumph of this policy was most complete, in men's thoughts at any rate, about the middle of the nineteenth century. Now the pendulum is swinging backward. Fifty years of this reaction have brought public feeling close to the place where it was in the time of Adam Smith. In domestic problems we see the effect of this backward swing in an increased

tendency toward socialistic activity. In problems of foreign commerce and foreign relations in general, we see it exemplified in the return to some of those mercantilistic assumptions with which Adam Smith found it so hard a task to deal.

Under these circumstances, the practical wisdom of the "Essay on Colonies," which has made it a classic for all time, finds a special applicability in the conditions of the present. For Adam Smith is a theorist in the best sense of the word — a man whose breadth of view, instead of unfitting him for practical details, enables him to bring the widest lessons of history and experience to bear on the problems of the day, and makes his counsels most valuable to those who, by experience, know the perplexities with which these problems are attended.



YALE UNIVERSITY, April 20, 1901.

# ADAM SMITH'S ESSAY ON COLONIES.

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## PART I.

### OF THE MOTIVES FOR ESTABLISHING NEW COLONIES.

THE interest which occasioned the first settlement of the different European colonies in America and the West Indies, was not altogether so plain and distinct as that which directed the establishment of those of ancient Greece and Rome.

All the different states of ancient Greece possessed, each of them, but a very small territory, and when the people in any one of them multiplied beyond what that territory could easily maintain, a part of them were sent in quest of a new habitation in some remote and distant part of the world; the warlike neighbors who surrounded them on all sides, rendering it difficult for any of them to enlarge very much its territory at home. The colonies of the Dorians resorted chiefly to Italy and Sicily, which, in the times preceding the foundation of Rome, were inhabited by barbarous and uncivilized nations; those of the Ionians and Eolians, the two other great tribes of the Greeks, to Asia Minor and the islands of the Ægean Sea, of which the inhabitants seem at that time to have been pretty much in the same state as those of Sicily and Italy.

The mother city, though she considered the colony as a child, at all times entitled to great favor and assistance, and owing in return much gratitude and respect, yet considered it as an emancipated child, over whom she pretended to claim no direct authority or jurisdiction. The colony settled its own form of government, enacted its own laws, elected its own magistrates, and made peace or war with its neighbors as an independent state, which had no occasion to wait for the approbation or consent of the mother city. Nothing can be more plain and distinct than the interest which directed every such establishment.

Rome, like most of the other ancient republics, was originally founded upon an Agrarian law, which divided the public territory in a certain proportion among the different citizens who composed the state. The course of human affairs by marriage, by succession, and by alienation, necessarily deranged this original division, and frequently threw the lands, which had been allotted for the maintenance of many different families, into the possession of a single person. To remedy this disorder, for such it was supposed to be, a law was made, restricting the quantity of land which any citizen could possess to five hundred jugera, about three hundred and fifty English acres. This law, however, though we read of its having been executed upon one or two occasions, was either neglected or evaded, and the inequality of fortunes went on continually increasing. The greater part of the citizens had no land, and without it the manners and customs of those times rendered it difficult for a freeman to maintain his independency. In the present times, though a poor man has no land of his own, if he has a little stock, he may either farm the lands of another, or he may carry on some little retail trade; and if he has no stock, he may find employment either as a country laborer, or as an artificer. But, among the ancient Romans, the lands of the rich were all cultivated by slaves, who wrought under an overseer, who was likewise a slave; so that a poor freeman had little chance of being employed either as a farmer or as a laborer. All trades and manufactures too, even the retail trade, were carried

on by the slaves of the rich for the benefit of their masters, whose wealth, authority, and protection made it difficult for a poor freeman to maintain the competition against them. The citizens, therefore, who had no land, had scarce any other means of subsistence but the bounties of the candidates at the annual elections. The tribunes, when they had a mind to animate the people against the rich and the great, put them in mind of the ancient division of lands, and represented that law which restricted this sort of private property as the fundamental law of the republic. The people became clamorous to get land, and the rich and the great, we may believe, were perfectly determined not to give them any part of theirs. To satisfy them in some measure, therefore, they frequently proposed to send out a new colony. But conquering Rome was, even upon such occasions, under no necessity of turning out her citizens to seek their fortune, if one may say so, through the wide world, without knowing where they were to settle. She assigned them lands generally in the conquered provinces of Italy, where being within the dominions of the republic, they could never form any independent state; but were at best but a sort of corporation, which, though it had the power of enacting by-laws for its own government, was at all times subject to the correction, jurisdiction, and legislative authority of the mother city. The sending out a colony of this kind not only gave some satisfaction to the people, but often established a sort of garrison too in a newly conquered province, of which the obedience might otherwise have been doubtful. A Roman colony, therefore, whether we consider the nature of the establishment itself, or the motives for making it, was altogether different from a Greek one. The words accordingly, which in the original languages denote those different establishments, have very different meanings. The Latin word (*colonia*) signifies simply a plantation. The Greek word (*ἀποικία*), on the contrary, signifies a separation of dwelling, a departure from home, a going out of the house. But, though the Roman colonies were in many respects different from the Greek ones, the interest which prompted to establish them was equally plain and distinct.

Both institutions derived their origin either from irresistible necessity, or from clear and evident utility.

The establishment of the European colonies in America and the West Indies arose from no necessity: and though the utility which has resulted from them has been very great, it is not altogether so clear and evident. It was not understood at their first establishment, and was not the motive either of that establishment or of the discoveries which gave occasion to it; and the nature, extent, and limits of that utility are not, perhaps well understood at this day.

The Venetians, during the fourteenth and fifteenth centuries, carried on a very advantageous commerce in spiceries, and other East India goods, which they distributed among the other nations of Europe. They purchased them chiefly in Egypt, at that time under the dominion of the Mammelukes, the enemies of the Turks, of whom the Venetians were the enemies; and this union of interest, assisted by the money of Venice, formed such a connection as gave the Venetians almost a monopoly of the trade.

The great profits of the Venetians tempted the avidity of the Portuguese. They had been endeavoring, during the course of the fifteenth century, to find out by sea a way to the countries from which the Moors brought them ivory and gold dust across the desert. They discovered the Madeiras, the Canaries, the Azores, the Cape Verde Islands, the coast of Guinea, that of Loango, Congo, Angola, and Benguela, and finally, the Cape of Good Hope. They had long wished to share in the profitable traffic of the Venetians, and this last discovery opened to them a probable prospect of doing so. In 1497, Vasco de Gama sailed from the port of Lisbon with a fleet of four ships, and after a navigation of eleven months, arrived upon the coast of Indostan, and thus completed a course of discoveries which had been pursued with great steadiness, and with very little interruption, for near a century together.

Some years before this, while the expectations of Europe were in suspense about the projects of the Portuguese, of which the success appeared yet to be doubtful, a Genoese pilot formed the yet more daring

project of sailing to the East Indies by the west. The situation of those countries was at that time very imperfectly known in Europe. The few European travelers who had been there had magnified the distance; perhaps through simplicity and ignorance, what was really very great, appearing almost infinite to those who could not measure it; or, perhaps, in order to increase somewhat more the marvelous of their own adventures in visiting regions so immensely remote from Europe. The longer the way was by the east, Columbus very justly concluded, the shorter it would be by the west. He proposed, therefore to take that way, as both the shortest and the surest, and he had the good fortune to convince Isabella of Castile of the probability of his project. He sailed from the port of Palos in August 1492, near five years before the expedition of Vasco de Gama set out from Portugal, and after a voyage of between two and three months discovered first some of the small Bahama or Lucayan islands, and afterward the great island of St. Domingo.

But the countries which Columbus discovered either in this or in any of his subsequent voyages, had no resemblance to those which he had gone in quest of. Instead of the wealth, cultivation and populousness of China and Indostan, he found, in St. Domingo, and in all the other parts of the new world which he ever visited, nothing but a country quite covered with wood, uncultivated, and inhabited only by some tribes of naked and miserable savages. He was not very willing, however, to believe that they were not the same with some of the countries described by Marco Polo, the first European who had visited, or at least had left behind him any description of China or the East Indies; and a very slight resemblance, such as that which he found between the name of Cibao, a mountain in St. Domingo, and that of Cipango, mentioned by Marco Polo, was frequently sufficient to make him return to this favorite prepossession, though contrary to the clearest evidence. In his letters to Ferdinand and Isabella he called the countries which he had discovered, the Indies. He entertained no doubt but that they were the extremity of those which

had been described by Marco Polo, and that they were not very distant from the Ganges, or from the countries which had been conquered by Alexander. Even when at last convinced that they were different, he still flattered himself that those rich countries were at no great distance, and in a subsequent voyage, accordingly, went in quest of them along the coast of terra firma, and toward the isthmus of Darien.

In consequence of this mistake of Columbus, the name of the Indies has stuck to those unfortunate countries ever since; and when it was at last clearly discovered that the new were altogether different from the old Indies, the former were called the West, in contradistinction to the latter, which were called the East Indies.

It was of importance to Columbus, however, that the countries which he had discovered, whatever they were, should be represented to the court of Spain as of very great consequence; and, in what constitutes the real riches of every country, the animal and vegetable productions of the soil, there was at that time nothing which could well justify such a representation of them.

The Cori, something between a rat and a rabbit, and supposed by Mr. Buffon to be the same with the Aperea of Brazil, was the largest viviparous quadruped in St. Domingo. This species seems never to have been very numerous, and the dogs and cats of the Spaniards are said to have long ago almost entirely extirpated it, as well as some other tribes of a still smaller size. These, however, together with a pretty large lizard, called the Ivana or Iguana, constituted the principal part of the animal food which the land afforded.

The vegetable food of the inhabitants, though from their want of industry not very abundant, was not altogether so scanty. It consisted in Indian corn, yams, potatoes, bananas, etc., plants which were then altogether unknown in Europe, and which have never since been very much esteemed in it, or supposed to yield a sustenance equal to what is drawn from the common sorts of grain and pulse, which have been cultivated in this part of the world time out of mind.

The cotton plant indeed afforded the material of a

very important manufacture, and was at that time to Europeans undoubtedly the most valuable of all the vegetable productions of those islands. But though in the end of the fifteenth century the muslins and other cotton goods of the East Indies were much esteemed in every part of Europe, the cotton manufacture itself was not cultivated in any part of it. Even this production, therefore, could not at that time appear in the eyes of Europeans to be of very great consequence.

Finding nothing either in the animals or vegetables of the newly discovered countries, which could justify a very advantangeous representation of them, Columbus turned his view toward their minerals; and in the richness of the productions of this third kingdom, he flattered himself, he had found a full compensation for the insignificance of those of the other two. The little bits of gold with which the inhabitants ornamented their dress, and which, he was informed, they frequently found in the rivulets and torrents that fell from the mountains, were sufficient to satisfy him that those mountains abounded with the richest gold mines. St. Domingo, therefore, was represented as a country abounding with gold, and, upon that account (according to the prejudices not only of the present times, but of those times), an inexhaustible source of real wealth to the Crown and kingdom of Spain. When Columbus, upon his return from his first voyage, was introduced with a sort of triumphal honors to the sovereigns of Castile and Aragon, the principal productions of the countries which he had discovered were carried in solemn procession before him. The only valuable part of them consisted in some little fillets, bracelets, and other ornaments of gold, and in some bales of cotton. The rest were mere objects of vulgar wonder and curiosity; some reeds of an extraordinary size, some birds of a very beautiful plumage, and some stuffed skins of the huge alligator and manati; all of which were preceded by six or seven of the wretched natives, whose singular color and appearance added greatly to the novelty of the show.

In consequence of the representations of Columbus, the council of Castile determined to take possession of coun-

tries of which the inhabitants were plainly incapable of defending themselves. The pious purpose of converting them to Christianity sanctified the injustice of the project. But the hope of finding treasures of gold there, was the sole motive which prompted to undertake it; and to give this motive the greater weight, it was proposed by Columbus that the half of all the gold and silver that should be found there should belong to the Crown. This proposal was approved of by the council.

As long as the whole or the greater part of the gold, which the first adventurers imported into Europe, was got by so very easy a method as the plundering of the defenseless natives, it was not perhaps very difficult to pay even this heavy tax. But when the natives were once fairly stripped of all that they had, which, in St. Domingo, and in all the other countries discovered by Columbus, was done completely in six or eight years, and when in order to find more it had become necessary to dig for it in the mines, there was no longer any possibility of paying this tax. The rigorous exaction of it, accordingly, first occasioned, it is said, the total abandonment of the mines of St. Domingo, which have never been wrought since. It was soon reduced, therefore to a third; then to a fifth; afterwards to a tenth; and at last to a twentieth part of the gross produce of the gold mines. The tax upon silver continued for a long time to be a fifth of the gross produce. It was reduced to a tenth only in the course of the present century. But the first adventurers do not appear to have been much interested about silver. Nothing less precious than gold seemed worthy of their attention.

All the other enterprises of the Spaniards in the new world, subsequent to those of Columbus, seem to have been prompted by the same motive. It was the sacred thirst of gold that carried Oieda, Nicuessa, and Vasco Nugnes de Balboa to the isthmus of Darien, that carried Cortez to Mexico, and Almagro and Pizzaro to Chili and Peru. When those adventurers arrived upon any unknown coast, their first inquiry was always if there was any gold to be found there; and according to the information which they received concerning this par-

ticular, they determined either to quit the country or to settle in it.

Of all those expensive and uncertain projects, however, which bring bankruptcy upon the greater part of the people who engage in them, there is none perhaps more perfectly ruinous than the search after new silver and gold mines. It is perhaps the most disadvantageous lottery in the world, or the one in which the gain of those who draw the prizes bears the least proportion to the loss of those who draw the blanks: for though the prizes are few and the blanks many, the common price of a ticket is the whole fortune of a very rich man. Projects of mining, instead of replacing the capital employed in them, together with the ordinary profits of stock, commonly absorb both capital and profit. They are the projects, therefore, to which of all others a prudent lawgiver, who desired to increase the capital of his nation, would least choose to give any extraordinary encouragement, or to turn toward them a greater share of that capital than what would go to them of its own accord. Such in reality is the absurd confidence which almost all men have in their own good fortune, that wherever there is the least probability of success, too great a share of it is apt to go to them of its own accord.

But though the judgment of sober reason and experience concerning such projects has always been extremely unfavorable, that of human avidity has commonly been quite otherwise. The same passion which has suggested to so many people the absurd idea of the philosopher's stone, has suggested to others the equally absurd one of immense rich mines of gold and silver. They did not consider that the value of those metals has, in all ages and nations, arisen chiefly from their scarcity, and that their scarcity has arisen from the very small quantities of them which nature has anywhere deposited in one place, from the hard and intractable substances with which she has almost everywhere surrounded those small quantities, and consequently from the labor and expense which are everywhere necessary in order to penetrate to and get at them. They flattered themselves that veins of those metals might in many places be found as large and as

abundant as those which are commonly found of lead, or copper, or tin, or iron. The dream of Sir Walter Raleigh concerning the golden city and country of Eldorado, may satisfy us that even wise men are not always exempt from such strange delusions. More than a hundred years after the death of that great man, the Jesuit Gumila was still convinced of the reality of that wonderful country, and expressed with great warmth, and I dare to say, with great sincerity, how happy he should be to carry the light of the gospel to a people who could so well reward the pious labors of their missionary.

In the countries first discovered by the Spaniards, no gold or silver mines are at present known, which are supposed to be worth the working. The quantities of those metals which the first adventurers are said to have found there, had probably been very much magnified, as well as the fertility of the mines which were wrought immediately after the first discovery. What those adventurers were reported to have found, however, was sufficient to inflame the avidity of all their countrymen. Every Spaniard who sailed to America expected to find an Eldorado. Fortune too did upon this what she has done upon very few other occasions. She realized in some measure the extravagant hopes of her votaries, and in the discovery and conquest of Mexico and Peru (of which the one happened about thirty, the other about forty years after the first expedition of Columbus) she presented them with something not very unlike that profusion of the precious metals which they sought for.

A project of commerce to the East Indies, therefore, gave occasion to the first discovery of the West. A project of conquest gave occasion to all the establishments of the Spaniards in those newly discovered countries. The motive which excited them to this conquest was a project of gold and silver mines; and a course of accidents, which no human wisdom could foresee, rendered this project much more successful than the undertakers had any reasonable grounds for expecting.

The first adventurers of all the other nations of Europe, who attempted to make settlements in America, were

animated by the like chimerical views; but they were not equally successful. It was more than a hundred years after the first settlement of the Brazils before any silver, gold, or diamond mines were discovered there. In the English, French, Dutch, and Danish colonies, none have ever yet been discovered; at least none that are at present supposed to be worth the working. The first English settlers in North America, however, offered a fifth of all the gold and silver which should be found there to the king as a motive for granting them their patents. In the patents to Sir Walter Raleigh, to the London and Plymouth companies, to the Council of Plymouth, etc., this fifth was accordingly reserved to the Crown. To the expectation of finding gold and silver mines, those first settlers, too, joined that of discovering a northwest passage to the East Indies. They have hitherto been disappointed in both.

## PART II.

### Causes of the Prosperity of New Colonies.

The colony of a civilized nation which takes possession, either of a waste country or of one so thinly inhabited, that the natives easily give place to the new settlers, advances more rapidly to wealth and greatness than any other human society.

The colonists carry out with them a knowledge of agriculture and of other useful arts, superior to what can grow up of its own accord in the course of many centuries among savage and barbarous nations. They carry out with them too, the habit of subordination, some notion of the regular government which takes place in their own country, of the system of laws which supports it, and of a regular administration of justice; and they naturally establish something of the same kind in the new settlement. But among savage and barbarous nations, the natural progress of law and government is still slower than the natural progress of arts, after law and government have been so far established, as is necessary for their protection. Every colonist gets more land than he can possibly cultivate. He has no rent, and scarce any taxes to pay. No landlord shares with him in its produce, and the share of the sovereign is commonly but a trifle. He has every motive to render as great as possible a produce, which is thus to be almost entirely his own. But his land is commonly so extensive, that with all his own industry, and with all the industry of other people whom he can get to employ, he can seldom make it produce the tenth part of what it is capable of producing. He is eager, therefore, to collect laborers from all quarters, and to reward them with the most liberal wages. But those liberal wages, joined to the plenty and cheapness of land, soon make those laborers leave him, in order to become landlords themselves, and to reward,

with equal liberality, other laborers, who soon leave them for the same reason that they left their first master. The liberal reward of labor encourages marriage. The children, during the tender years of infancy, are well fed and properly taken care of, and when they are grown up, the value of their labor, greatly overpays their maintenance. When arrived at maturity, the high price of labor, and the low price of land, enable them to establish themselves in the same manner as their fathers did before them.

In other countries rent and profit eat up wages, and the two superior orders of people oppress the inferior one. But in new colonies, the interest of the two superior orders obliges them to treat the inferior one with more generosity and humanity; at least where that inferior one is not in a state of slavery. Waste lands of the greatest natural fertility are to be had for a trifle. The increase of revenue which the proprietor, who is always the undertaker, expects from their improvement, constitutes his profit; which in these circumstances is commonly very great. But this great profit cannot be made without employing the labor of other people in clearing and cultivating the land; and the disproportion between the great extent of the land and the small number of the people, which commonly takes place in new colonies, makes it difficult for him to get this labor. He does not, therefore, dispute about wages, but is willing to employ labor at any price. The high wages of labor encourage population. The cheapness and plenty of good land encourage improvement, and enable the proprietor to pay those high wages. In those wages consists almost the whole price of the land; and though they are high, considered as the wages of labor, they are low, considered as the price of what is so very valuable. What encourages the progress of population and improvement, encourages that of real wealth and greatness.

The progress of many of the ancient Greek colonies toward wealth and greatness, seems accordingly to have been very rapid. In the course of a century or two, several of them appear to have rivaled, and even to have surpassed their mother cities. Syracuse and Agrigen-

tum in Sicily, Tarentum and Locri in Italy, Ephesus and Miletus in Lesser Asia, appear by all accounts to have been at least equal to any of the cities of ancient Greece. Though posterior in their establishment, yet all the arts of refinement, philosophy, poetry, and eloquence, seem to have been cultivated as early, and to have been improved as highly in them, as in any part of the mother country. The schools of the two oldest Greek philosophers, those of Thales and Pythagoras, were established, it is remarkable, not in ancient Greece, but the one in an Asiatic, the other in an Italian colony. All those colonies had established themselves in countries inhabited by savage and barbarous nations, who easily gave place to the new settlers. They had plenty of good land, and as they were altogether independent of the mother city, they were at liberty to manage their own affairs in the way that they judged was most suitable to their own interest.

The history of the Roman colonies is by no means so brilliant. Some of them, indeed, such as Florence, have in the course of many ages, and after the fall of the mother city, grown up to be considerable states. But the progress of no one of them seems ever to have been very rapid. They were all established in conquered provinces, which in most cases had been fully inhabited before. The quantity of land assigned to each colonist was seldom very considerable, and as the colony was not independent, they were not always at liberty to manage their own affairs in the way that they judged was most suitable to their own interest.

In the plenty of good land the European colonies established in America and the West Indies resemble, and even greatly surpass, those of ancient Greece. In their dependency upon the mother state they resemble those of ancient Rome; but their great distance from Europe has in all of them alleviated more or less the effects of this dependency. Their situation has placed them less in the view and less in the power of their mother country. In pursuing their interest their own way, their conduct has, upon many occasions, been overlooked, either because not known or not understood in Europe; and upon some occasions it

has been fairly suffered and submitted to, because their distance rendered it difficult to restrain it. Even the violent and arbitrary government of Spain has, upon many occasions, been obliged to recall or soften the orders which had been given for the government of her colonies, for fear of a general insurrection. The progress of all the European colonies in wealth, population, and improvement, has accordingly been very great.

The Crown of Spain, by its share of the gold and silver, derived some revenue from its colonies, from the moment of their first establishment. It was a revenue, too, of a nature to excite in human avidity the most extravagant expectations of still greater riches. The Spanish colonies, therefore, from the moment of their first establishment, attracted very much the attention of their mother country; while those of the other European nations were for a long time in a great measure neglected. The former did not, perhaps, thrive the better in consequence of this attention; nor the latter the worse in consequence of this neglect. In proportion to the extent of the country which they in some measure possess, the Spanish colonies are considered as less populous and thriving than those of almost any other European nation. The progress even of the Spanish colonies, however, in population and improvement, has certainly been very rapid and very great. The city of Lima, founded since the conquest, is represented in Ulloa, as containing fifty thousand inhabitants nearly thirty years ago. Quito, which had been but a miserable hamlet of Indians, is represented by the same author as in his time equally populous. Gemelli Carreri, a pretended traveler, it is said, indeed, but who seems everywhere to have written upon extreme good information, represents the city of Mexico as containing a hundred thousand inhabitants; a number which, in spite of all the exaggerations of the Spanish writers, is, probably, more than five times greater than what it contained in the time of Montezuma. These numbers exceed greatly those of Boston, New York and Philadelphia, the three greatest cities of the English colonies. Before the conquest of the Spaniards there were no cattle fit for draught either in Mexico or Peru. The llama was their only beast of burden, and its strength

seems to have been a good deal inferior to that of a common ass. The plow was unknown among them. They were ignorant of the use of iron. They had no coined money, nor any established instrument of commerce of any kind. Their commerce was carried on by barter. A sort of wooden spade was their principal instrument of agriculture. Sharp stones served them for knives and hatchets to cut with; fish bones and the hard sinews of certain animals served them for needles to sew with; and these seem to have been their principal instruments of trade. In this state of things, it seems impossible that either of those empires could have been so much improved or so well cultivated as at present, when they are plentifully furnished with all sorts of European cattle, and when the use of iron, of the plow, and of many of the arts of Europe, has been introduced among them. But the populousness of every country must be in proportion to the degree of its improvement and cultivation. In spite of the cruel destruction of the natives which followed the conquest, these two great empires are, probably, more populous now than they ever were before; and the people are surely very different; for we must acknowledge, I apprehend, that the Spanish creoles are in many respects superior to the ancient Indians.

After the settlements of the Spaniards, that of the Portuguese in Brazil is the oldest of any European nation in America. But as for a long time after the first discovery, neither gold nor silver mines were found in it, and as it afforded, upon that account, little or no revenue to the Crown, it was for a long time in a great measure neglected; and during this state of neglect, it grew up to be a great and powerful colony. While Portugal was under the dominion of Spain, Brazil was attacked by the Dutch, who got possession of seven of the fourteen provinces into which it is divided. They expected soon to conquer the other seven, when Portugal recovered its independency by the elevation of the family of Braganza to the throne. The Dutch then, as enemies to the Spaniards, became friends to the Portuguese, who were likewise the enemies of the Spaniards. They agreed, therefore, to

leave that part of Brazil, which they had not conquered, to the King of Portugal, who agreed to leave that part which they had conquered to them, as a matter not worth disputing about with such good allies. But the Dutch government soon began to oppress the Portuguese colonists, who, instead of amusing themselves with complaints, took arms against their new masters, and by their own valor and resolution, with the connivance of, but without any avowed assistance from, the mother country, drove them out of Brazil. The Dutch, therefore, finding it impossible to keep any part of the country to themselves, were contented that it should be entirely restored to the Crown of Portugal. In this colony there are said to be more than six hundred thousand people, either Portuguese or descended from Portuguese, creoles, mulattoes, and a mixed race between Portuguese and Brazilians. No one colony in America is supposed to contain so great a number of people of European extraction.

Toward the end of the fifteenth, and during the greater part of the sixteenth century, Spain and Portugal were the two great naval powers upon the ocean: for though the commerce of Venice extended to every part of Europe, its fleets had scarce ever sailed beyond the Mediterranean. The Spaniards, in virtue of the first discovery, claimed all America as their own; and though they could not hinder so great a naval power as that of Portugal from settling in Brazil, such was, at that time, the terror of their name, that the greater part of the other nations of Europe were afraid to establish themselves in any other part of that great continent. The French, who attempted to settle in Florida, were all murdered by the Spaniards. But the declension of the naval power of this latter nation, in consequence of the defeat or miscarriage of, what they called, their Invincible Armada, which happened toward the end of the sixteenth century, put it out of their power to obstruct any longer the settlements of the other European nations. In the course of the seventeenth century, therefore, the English, French, Dutch, Danes, and Swedes, all the great nations who had any ports upon the ocean, attempted to make some settlements in the new world.

The Swedes established themselves in New Jersey; and the number of Swedish families still to be found there, sufficiently demonstrates, that this colony was very likely to prosper, had it been protected by the mother country. But being neglected by Sweden, it was soon swallowed up by the Dutch colony of New York, which again, in 1674, fell under the dominion of the English.

The small islands of St. Thomas and Santa Cruz are the only countries in the new world that have ever been possessed by the Danes. These little settlements too were under the government of an exclusive company, which had the sole right, both of purchasing the surplus produce of the colonists, and of supplying them with such goods of other countries as they wanted, and which, therefore, both in its purchases and sales, had not only the power of oppressing them, but the greatest temptation to do so. The government of an exclusive company of merchants is, perhaps, the worst of all governments for any country whatever. It was not, however, able to stop altogether the progress of these colonies, though it rendered it more slow and languid. The late king of Denmark dissolved this company, and since that time the prosperity of these colonies has been very great.

The Dutch settlements in the West, as well as those in the East Indies, were originally put under the government of an exclusive company. The progress of some of them, therefore, though it has been considerable, in comparison with that of almost any country that has been long peopled and established, has been languid and slow in comparison with that of the greater part of new colonies. The colony of Surinam, though very considerable, is still inferior to the greater part of the sugar colonies of the other European nations. The colony of Nova Belgia, now divided into the two provinces of New York, and New Jersey, would probably have soon become considerable too, even though it had remained under the government of the Dutch. The plenty and cheapness of good land are such powerful causes of prosperity, that the very worst government is scarce capable of checking altogether the efficacy of their operation. The great distance too from the mother

country would enable the colonists to evade more or less, by smuggling, the monopoly which the company enjoyed against them. At present the company allows all Dutch ships to trade to Surinam upon paying two and a half per cent. upon the value of their cargo for a license; and only reserves to itself exclusively the direct trade from Africa to America, which consists almost entirely in the slave trade. This relaxation in the exclusive privileges of the company, is probably the principal cause of that degree of prosperity which that colony at present enjoys. Curaçoa and Eustatia, the two principal islands belonging to the Dutch, are free ports open to the ships of all nations; and this freedom, in the midst of better colonies whose ports are open to those of one nation only, has been the great cause of the prosperity of those two barren islands.

The French colony of Canada was, during the greater part of the last century, and some part of the present, under the government of an exclusive company. Under so unfavorable an administration its progress was necessarily very slow in comparison with that of other new colonies; but it became much more rapid when this company was dissolved after the fall of what is called the Mississippi scheme. When the English got possession of this country, they found in it near double the number of inhabitants which Father Charlevoix had assigned to it between twenty and thirty years before. That Jesuit had traveled over the whole country, and had no inclination to represent it as less considerable than it really was.

The French colony of St. Domingo was established by pirates and freebooters, who for a long time, neither required the protection, nor acknowledged the authority of France; and when that race of banditti became so far citizens as to acknowledge this authority, it was for a long time necessary to exercise it with very great gentleness. During this period the population and improvement of this colony increased very fast. Even the oppression of the exclusive company, to which it was for some time subjected, with all the other colonies of France, though it no doubt retarded, had not been able

to stop its progress altogether. The course of its prosperity returned as soon as it was relieved from that oppression. It is now the most important of the sugar colonies of the West Indies, and its produce is said to be greater than that of all the English sugar colonies put together. The other sugar colonies of France are in general all very thriving.

But there are no colonies of which the progress has been more rapid than that of the English in North America.

Plenty of good land, and liberty to manage their own affairs their own way, seem to be the two great causes of the prosperity of all new colonies.

In the plenty of good land the English colonies of North America, though, no doubt, very abundantly provided, are, however, inferior to those of the Spaniards and Portuguese, and not superior to some of those possessed by the French before the late war. But the political institutions of the English colonies have been more favorable to the improvement and cultivation of this land, than those of any of the other three nations.

First, the engrossing of uncultivated land, though it has by no means been prevented altogether, has been more restrained in the English colonies than in any other. The colony law which imposes upon every proprietor the obligation of improving and cultivating, within a limited time, a certain proportion of his lands, and which, in case of failure, declares those neglected lands grantable to any other person; though it has not, perhaps, been very strictly executed, has, however, had some effect.

Secondly, in Pennsylvania, there is no right of primogeniture, and lands, like movables, are divided equally among all the children of the family. In three of the provinces of New England the oldest has only a double share, as in the Mosaical Law. Though in those provinces, therefore, too great a quantity of land should sometimes be engrossed by a particular individual, it is likely, in the course of a generation or two, to be sufficiently divided again. In the other English colonies, indeed, the right of primogeniture takes place, as in the

law of England. But in all the English colonies the tenure of the lands, which are all held by free socage, facilitates alienation, and the grantee of any extensive tract of land, generally finds it for his interest to alienate, as fast as he can, the greater part of it, reserving only a small quit-rent. In the Spanish and Portuguese colonies, what is called the right of Majorazzo takes place in the succession of all those great estates to which any title of honor is annexed. Such estates go all to one person, and are in effect entailed and unalienable. The French colonies, indeed, are subject to the custom of Paris, which, in the inheritance of land, is much more favorable to the younger children than the law of England. But, in the French colonies, if any part of an estate, held by the noble tenure of chivalry and homage, is alienated, it is, for a limited time, subject to the right of redemption, either by the heir of the superior or by the heir of the family; and all the largest estates of the country are held by such noble tenures, which necessarily embarrass alienation. But, in a new colony, a great uncultivated estate is likely to be much more speedily divided by alienation than by succession. The plenty and cheapness of good land, it has already been observed, are the principal causes of the rapid prosperity of new colonies. The engrossing of land, in effect, destroys this plenty and cheapness. The engrossing of uncultivated land, besides, is the greatest obstruction to its improvement. But the labor that is employed in the improvement and cultivation of land affords the greatest and most valuable produce to the society. The produce of labor, in this case, pays not only its own wages, and the profit of the stock which employs it, but the rent of the land too upon which it is employed. The labor of the English colonists, therefore, being more employed in the improvement and cultivation of land, is likely to afford a greater and more valuable produce, than that of any of the other three nations, which, by the engrossing of land, is more or less diverted toward other employments.

Thirdly, the labor of the English colonists is not only likely to afford a greater and more valuable produce, but,

in consequence of the moderation of their taxes, a greater portion of this produce belongs to themselves, which they may store up and employ in putting into motion a still greater quantity of labor. The English colonists have never yet contributed anything toward the defense of the mother country, or toward the support of its civil government. They themselves, on the contrary, have hitherto been defended almost entirely at the expense of the mother country. But the expense of fleets and armies is out of all proportion greater than the necessary expense of civil government. The expense of their own civil government has always been very moderate. It has generally been confined to what was necessary for paying competent salaries to the governor, to the judges, and to some other officers of police, and for maintaining a few of the most useful public works. The expense of the civil establishment of Massachusett's Bay, before the commencement of the present disturbances, used to be but about £18,000 a year. That of New Hampshire and Rhode Island £3,500 each. That of Connecticut £4,000. That of New York and Pennsylvania £4,500 each. That of New Jersey £1,200. That of Virginia and South Carolina £8,000 each. The civil establishments of Nova Scotia and Georgia are partly supported by an annual grant of Parliament. But Nova Scotia pays, besides, about £7,000 a year toward the public expenses of the colony; and Georgia about £2,500 a year. All the different civil establishments in North America, in short, exclusive of those of Maryland and North Carolina, of which no exact account has been got, did not, before the commencement of the present disturbances, cost the inhabitants above £64,700 a year; an ever-memorable example at how small an expense three millions of people may not only be governed, but well governed. The most important part of the expense of government, indeed, that of defense and protection, has constantly fallen upon the mother country. The ceremonial too of the civil government in the colonies, upon the reception of a new governor, upon the opening of a new assembly, etc., though sufficiently decent, is not accompanied with any expensive pomp or parade. Their ecclesiastical government is

conducted upon a plan equally frugal. Tithes are unknown among them; and their clergy, who are far from being numerous, are maintained either by moderate stipends, or by the voluntary contributions of the people. The power of Spain and Portugal, on the contrary, derives some support from the taxes levied upon their colonies. France, indeed has never drawn any considerable revenue from its colonies, the taxes which it levies upon them being generally spent among them. But the colony government of all these three nations is conducted upon a much more expensive plan, and is accompanied with a much more expensive ceremonial. The sums spent upon the reception of a new viceroy of Peru, for example, have frequently been enormous. Such ceremonials are not only real taxes paid by the rich colonists upon those particular occasions, but they serve to introduce among them the habit of vanity and expense upon all other occasions. They are not only very grievous occasional taxes, but they contribute to establish perpetual taxes of the same kind still more grievous; the ruinous taxes of private luxury and extravagance. In the colonies of all those three nations too, the ecclesiastical government is extremely oppressive. Tithes take place in all of them, and are levied with the utmost rigor in those of Spain and Portugal. All of them besides are oppressed with a numerous race of mendicant friars, whose beggary being not only licensed, but consecrated by religion, is a most grievous tax upon the poor people, who are most carefully taught that it is a duty to give, and a very great sin to refuse them their charity. Over and above all this, the clergy are, in all of them, the greatest engrossers of land.

Fourthly, in the disposal of their surplus produce, or of what is over and above their own consumption, the English colonies have been more favored, and have been allowed a more extensive market, than those of any other European nation. Every European nation has endeavored more or less to monopolize to itself the commerce of its colonies, and, upon that account, has prohibited the ships of foreign nations from trading to them, and has prohibited them from importing European goods from any foreign

nation. But the manner in which this monopoly has been exercised in different nations has been very different.

Some nations have given up the whole commerce of their colonies to an exclusive company, of whom the colonies were obliged to buy all such European goods as they wanted, and to whom they were obliged to sell the whole of their own surplus produce. It was the interest of the company, therefore, not only to sell the former as dear, and to buy the latter as cheap as possible, but to buy no more of the latter, even at this low price, than what they could dispose of for a very high price in Europe. It was their interest not only to degrade in all cases the value of the surplus produce of the colony, but in many cases to discourage and keep down the natural increase of its quantity. Of all the expedients that can well be contrived to stunt the natural growth of a new colony, that of an exclusive company is undoubtedly the most effectual. This, however, has been the policy of Holland, though their company, in the course of the present century, has given up in many respects the exercise of their exclusive privilege. This too, was the policy of Denmark till the reign of the late king. It has occasionally been the policy of France, and of late, since 1755, after it had been abandoned by all other nations, on account of its absurdity, it has become the policy of Portugal with regard at least to two of the principal provinces of Brazil, Pernambuco and Marannon.

Other nations, without establishing an exclusive company, have confined the whole commerce of their colonies to a particular port of the mother country, from whence no ship was allowed to sail, but either in a fleet and at a particular season, or, if single, in consequence of a particular license, which in most cases was very well paid for. This policy opened, indeed, the trade of the colonies to all the natives of the mother country, provided they traded from the proper port, at the proper season, and in the proper vessels. But as all the different merchants, who joined their stock in order to fit out those licensed vessels, would find it for their interest to act in concert, the trade which was carried on in this manner would necessarily be conducted very nearly upon the same principles as that of

an exclusive company. The profit of those merchants would be almost equally exorbitant and oppressive. The colonies would be ill supplied, and would be obliged both to buy very dear, and to sell very cheap. This, however, till within these few years, had always been the policy of Spain, and the price of all European goods, accordingly, is said to have been enormous in the Spanish West Indies. At Quito, we are told by Ulloa, a pound of iron sold for about four and sixpence, and a pound of steel for about six and ninepence sterling. But it is chiefly in order to purchase European goods, that the colonies part with their own produce. The more, therefore, they pay for the one, the less they really get for the other, and the dearness of the one is the same thing with the cheapness of the other. The policy of Portugal is in this respect the same as the ancient policy of Spain, with regard to all its colonies, except Pernambuco and Marannon, and with regard to these it has lately adopted a still worse.

Other nations leave the trade of their colonies free to all their subjects, who may carry it on from all the different ports of the mother country, and who have occasion for no other license than the common dispatches of the customhouse. In this case the number and dispersed situation of the different traders renders it impossible for them to enter into any general combination, and their competition is sufficient to hinder them from making very exorbitant profits. Under so liberal a policy the colonies are enabled both to sell their own produce and to buy the goods of Europe at a reasonable price. But since the dissolution of the Plymouth company, when our colonies were but in their infancy, this has always been the policy of England. It has generally too, been that of France, and has been uniformly so since the dissolution of what, in England, is commonly called their Mississippi company. The profits of the trade, therefore, which France and England carry on with their colonies, though no doubt somewhat higher than if the competition was free to all other nations, are, however, by no means exorbitant; and the price of European goods accordingly is not extravagantly high in the greater part of the colonies of either of those nations.

In the exportation of their own surplus produce too, it is only with regard to certain commodities that the colonies of Great Britain are confined to the market of the mother country. These commodities having been enumerated in the act of navigation and in some other subsequent acts, have upon that account been called ENUMERATED COMMODITIES. The rest are called NON-ENUMERATED; and may be exported directly to other countries, provided it is in British or Plantation ships, of which the owners and three-fourths of the mariners are British subjects.

Among the non-enumerated commodities are some of the most important productions of America and the West Indies; grain of all sorts, lumber, salt provisions, fish, sugar, and rum.

Grain is naturally the first and principal object of the culture of all new colonies. By allowing them a very extensive market for it, the law encourages them to extend this culture much beyond the consumption of a thinly inhabited country, and thus to provide beforehand an ample subsistence for a continually increasing population.

In a country quite covered with wood, where timber consequently is of little or no value, the expense of clearing the ground is the principal obstacle to improvement. By allowing the colonies a very extensive market for their lumber, the law endeavors to facilitate improvement by raising the price of a commodity which would otherwise be of little value, and thereby enabling them to make some profit of what would otherwise be mere expense.

In a country neither half-peopled nor half-cultivated, cattle naturally multiply beyond the consumption of the inhabitants, and are often upon that account of little or no value. But it is necessary, it has already been shown, that the price of cattle should bear a certain proportion to that of corn before the greater part of the lands of any country can be improved. By allowing to American cattle, in all shapes, dead and alive, a very extensive market, the law endeavors to raise the value of a commodity of which the high price is so very essential to improvement. The good effects of this liberty, however, must be somewhat diminished by the 4th of George III.

c. 15., which puts hides and skins among the enumerated commodities, and thereby tends to reduce the value of American cattle.

To increase the shipping and naval power of Great Britain by the extension of the fisheries of our colonies, is an object which the legislature seems to have had almost constantly in view. Those fisheries, upon this account, have had all the encouragement which freedom can give them, and they have flourished accordingly. The New England fishery in particular was, before the late disturbances, one of the most important, perhaps, in the world. The whale fishery, which, notwithstanding an extravagant bounty, is in Great Britain carried on to so little purpose, that in the opinion of many people (which I do not, however, pretend to warrant) the whole produce does not much exceed the value of the bounties which are annually paid for it, is in New England carried on without any bounty to a very great extent. Fish is one of the principal articles with which the North Americans trade to Spain, Portugal and the Mediterranean.

Sugar was originally an enumerated commodity which could be exported only to Great Britain. But in 1731, upon a representation of the sugar planters, its exportation was permitted to all parts of the world. The restrictions, however, with which this liberty was granted, joined to the high price of sugar in Great Britain, have rendered it, in a great measure, ineffectual. Great Britain and her colonies still continue to be almost the sole market for all the sugar produced in the British plantations. Their consumption increases so fast, that, though in consequence of the increasing improvement in Jamaica, as well as of the Ceded Islands, the importation of sugar has increased very greatly within these twenty years, the exportation to foreign countries is said to be not much greater than before.

Rum is a very important article in the trade which the Americans carry on to the coast of Africa, from which they bring back negro slaves in return.

If the whole surplus produce of America in grain of all sorts, in salt provisions, and in fish, had been put into the enumeration, and thereby forced into the market of

Great Britain, it would have interfered too much with the produce of the industry of our own people. It was probably not so much from any regard to the interests of America, as from a jealousy of this interference, that those important commodities have not only been kept out of the enumeration, but that the importation into Great Britain of all grain, except rice, and of all salt provisions, has, in the ordinary state of the law, been prohibited.

The non-enumerated commodities could originally be exported to all parts of the world. Lumber and rice having been once put into the enumeration, when they were afterward taken out of it, were confined, as to the European market, to the countries that lie south of Cape Finisterre. By the 6th of George III. c. 52, all non-enumerated commodities were subjected to the like restriction. The parts of Europe which lie south of Cape Finisterre, are not manufacturing countries, and we were less jealous of the colony ships carrying home from them any manufactures which could interfere with our own.

The enumerated commodities are of two sorts: first, such as are either the peculiar produce of America, or as cannot be produced, or at least are not produced, in the mother country. Of this kind are, molasses, coffee, cocoa-nuts, tobacco, pimento, ginger, whale fins, raw silk, cotton, wool, beaver, and other peltry of America, indigo, fustic, and other dyeing woods: secondly, such as are not the peculiar produce of America, but which are and may be produced in the mother country, though not in such quantities as to supply the greater part of her demand, which is principally supplied from foreign countries. Of this kind are all naval stores, masts, yards, and bowsprits, tar, pitch, and turpentine, pig and bar iron, copper ore, hides and skins, pot and pearl ashes. The largest importation of commodities of the first kind could not discourage the growth or interfere with the sale of any part of the produce of the mother country. By confining them to the home market, our merchants, it was expected, would not only be enabled to buy them cheaper in the plantations, and consequently to sell them with a better profit at home, but to establish between the plantations and foreign countries an advantageous carrying

trade, of which Great Britain was necessarily to be the center or emporium, as the European country into which those commodities were first to be imported. The importation of commodities of the second kind might be so managed too, it was supposed, as to interfere, not with the sale of those of the same kind which were produced at home, but with that of those which were imported from foreign countries; because, by means of proper duties, they might be rendered always somewhat dearer than the former, and yet a good deal cheaper than the latter. By confining such commodities to the home market, therefore, it was proposed to discourage the produce, not of Great Britain, but of some foreign countries with which the balance of trade was believed to be unfavorable to Great Britain.

The prohibition of exporting from the colonies, to any other country but Great Britain, masts, yards and bowsprits, tar, pitch, and turpentine, naturally tended to lower the price of timber in the colonies, and consequently to increase the expense of clearing their lands, the principal obstacle to their improvement. But about the beginning of the present century, in 1703, the pitch and tar company of Sweden endeavored to raise the price of their commodities to Great Britain, by prohibiting their exportation, except in their own ships, at their own price, and in such quantities as they thought proper. In order to counteract this notable piece of mercantile policy, and to render herself as much as possible independent, not only of Sweden, but of all the other northern powers, Great Britain gave a bounty upon the importation of naval stores from America, and the effect of this bounty was to raise the price of timber in America, much more than the confinement to the home market could lower it; and as both regulations were enacted at the same time, their joint effect was rather to encourage than to discourage the clearing of the land in America.

Though pig and bar iron too have been put among the enumerated commodities, yet as, when imported from America, they are exempt from considerable duties to which they are subject when imported from any other

country, the one part of the regulation contributes more to encourage the erection of furnaces in America, than the other to discourage it. There is no manufacture which occasions so great a consumption of wood as a furnace, or which can contribute so much to the clearing of a country overgrown with it.

The tendency of some of these regulations to raise the value of timber in America, and thereby to facilitate the clearing of the land, was neither, perhaps, intended nor understood by the legislature. Though their beneficial effects, however, have been in this respect accidental, they have not upon that account been less real.

The most perfect freedom of trade is permitted between the British colonies of America and the West Indies, both in the enumerated and the non-enumerated commodities. Those colonies are now become so populous and thriving, that each of them finds in some of the others a great and extensive market for every part of its produce. All of them taken together, they make a great internal market for the produce of one another.

The liberality of England, however, toward the trade of her colonies has been confined chiefly to what concerns the market for their produce, either in its rude state, or in what may be called the very first stage of manufacture. The more advanced or more refined manufactures even of the colony produce, the merchants and manufacturers of Great Britain choose to reserve to themselves, and have prevailed upon the legislature to prevent their establishment in the colonies, sometimes by high duties, and sometimes by absolute prohibitions.

While, for example, Muscovado sugars from the British plantations, pay upon importation only 6*s.* 4*d.* the hundred weight; white sugars pay £1 1*s.* 1*d.*; and refined, either double or single, in loaves £4 2*s.* 5*d.* $\frac{8}{20}$. When those high duties were imposed, Great Britain was the sole, and she still continues to be the principal, market to which the sugars of the British colonies could be exported. They amounted, therefore, to a prohibition, at first of claying or refining sugar for any foreign market, and at present of claying or refining it for the market, which takes off, perhaps, more than nine-tenths of the

whole produce. The manufacture of claying or refining sugar accordingly, though it has flourished in all the sugar colonies of France, has been little cultivated in any of those of England, except for the market of the colonies themselves. While Grenada was in the hands of the French, there was a refinery of sugar, by claying at least, upon almost every plantation. Since it fell into those of the English, almost all works of this kind have been given up, and there are at present, October 1773, I am assured, not above two or three remaining in the island. At present, however, by an indulgence of the customhouse, clayed or refined sugar, if reduced from loaves into powder, is commonly imported as Muscovado.

While Great Britain encourages in America the manufactures of pig and bar iron, by exempting them from duties to which the like commodities are subject when imported from any other country, she imposes an absolute prohibition upon the erection of steel furnaces and slit mills in any of her American plantations. She will not suffer her colonists to work in those more refined manufactures even for their own consumption; but insists upon their purchasing of her merchants and manufacturers all goods of this kind which they have occasion for.

She prohibits the exportation from one province to another by water, and even the carriage by land upon horseback or in a cart, of hats, of wools and woollen goods, of the produce of America; a regulation which effectually prevents the establishment of any manufacture of such commodities for distant sale, and confines the industry of her colonists in this way to such coarse and household manufactures, as a private family commonly makes for its own use, or for that of some of its neighbors in the same province.

To prohibit a great people, however, from making all that they can of every part of their own produce, or from employing their stock and industry in the way that they judge most advantageous to themselves, is a manifest violation of the most sacred rights of mankind. Unjust, however, as such prohibitions may be, they have not hitherto been very hurtful to the colonies. Land is still

so cheap, and, consequently, labor so dear among them, that they can import from the mother country almost all the more refined or more advanced manufactures cheaper than they could make them for themselves. Though they had not, therefore, been prohibited from establishing such manufactures, yet in their present state of improvement, a regard to their own interest would, probably, have prevented them from doing so. In their present state of improvement, those prohibitions, perhaps, without cramping their industry, or restraining it from any employment to which it would have gone of its own accord, are only impertinent badges of slavery imposed upon them, without any sufficient reason, by the groundless jealousy of the merchants and manufacturers of the mother country. In a more advanced state they might be really oppressive and insupportable.

Great Britain too, as she confines to her own market some of the most important productions of the colonies, so in compensation she gives to some of them an advantage in that market; sometimes by imposing higher duties upon the like productions when imported from other countries, and sometimes by giving bounties upon their importation from the colonies. In the first way she gives an advantage in the home market to the sugar, tobacco, and iron of her own colonies, and in the second to their raw silk, to their hemp and flax, to their indigo, to their naval stores, and to their building timber. This second way of encouraging the colony produce by bounties upon importation is, so far as I have been able to learn, peculiar to Great Britain. The first is not. Portugal does not content herself with imposing higher duties upon the importation of tobacco from any other country, but prohibits it under the severest penalties.

With regard to the importation of goods from Europe, England has likewise dealt more liberally with her colonies than any other nation.

Great Britain allows a part, almost always the half, generally a larger portion, and sometimes the whole of the duty which is paid upon the importation of foreign goods, to be drawn back upon their exportation to any foreign country. No independent foreign country, it was

easy to foresee, would receive them if they came to it loaded with the heavy duties to which almost all foreign goods are subjected on their importation into Great Britain. Unless, therefore, some part of those duties was drawn back upon exportation, there was an end of the carrying trade; a trade so much favored by the mercantile system.

Our colonies, however, are by no means independent foreign countries; and Great Britain having assumed to herself the exclusive right of supplying them with all goods from Europe, might have forced them (in the same manner as other countries have done their colonies) to receive such goods loaded with all the same duties which they paid in the mother country. But, on the contrary, till 1763, the same drawbacks were paid upon the exportation of the greater part of foreign goods to our colonies as to any independent foreign country. In 1763, indeed, by the 4th of George III. c. 15, this indulgence was a good deal abated, and it was enacted, "That no part of the duty called the old subsidy should be drawn back for any goods of the growth, production, or manufacture of Europe or the East Indies, which should be exported from this kingdom to any British colony or plantation in America; wines, white calicoes and muslins excepted." Before this law, many different sorts of foreign goods might have been bought cheaper in the plantations than in the mother country; and some may still.

Of the greater part of the regulations concerning the colony trade, the merchants who carry it on, it must be observed have been the principal advisers. We must not wonder, therefore, if, in the greater part of them, their interest has been more considered than either that of the colonies or that of the mother country. In their exclusive privilege of supplying the colonies with all the goods which they wanted from Europe, and of purchasing all such parts of their surplus produce as could not interfere with any of the trades which they themselves carried on at home, the interest of the colonies was sacrificed to the interest of those merchants. In allowing the same drawbacks upon the re-exportation of the greater part of European and East India goods to the colonies, as upon

their re-exportation to any independent country, the interest of the mother country was sacrificed to it, even according to the mercantile ideas of that interest. It was for the interest of the merchants to pay as little as possible for the foreign goods which they sent to the colonies, and, consequently, to get back as much as possible of the duties which they advanced upon their importation into Great Britain. They might thereby be enabled to sell in the colonies, either the same quantity of goods with a greater profit, or a greater quantity with the same profit, and, consequently, to gain something either in one way or the other. It was, likewise, for the interest of the colonies to get all such goods as cheap and in as great abundance as possible. But this might not always be for the interest of the mother country. She might frequently suffer both in her revenue, by giving back a great part of the duties which had been paid upon the importation of such goods; and in her manufactures, by being undersold in the colony market, in consequence of the easy terms upon which foreign manufactures could be carried thither by means of those drawbacks. The progress of the linen manufacture of Great Britain, it is commonly said, has been a good deal retarded by the drawbacks upon the re-exportation of German linen to the American colonies.

But though the policy of Great Britain with regard to the trade of her colonies has been dictated by the same mercantile spirit as that of other nations, it has, however, upon the whole, been less illiberal and oppressive than that of any of them.

In everything, except their foreign trade, the liberty of the English colonists to manage their own affairs their own way is complete. It is in every respect equal to that of their fellow-citizens at home, and is secured in the same manner, by an assembly of the representatives of the people, who claim the sole right of imposing taxes for the support of the colony government. The authority of this assembly overawes the executive power, and neither the meanest nor the most obnoxious colonist, as long as he obeys the law, has anything to fear from the resentment, either of the governor, or of any other civil or military officer in the province. The colony assemblies,

though, like the House of Commons in England, are not always a very equal representation of the people, yet they approach more nearly to that character; and as the executive power either has not the means to corrupt them, or, on account of the support which it receives from the mother country, is not under the necessity of doing so, they are perhaps in general more influenced by the inclinations of their constituents. The councils, which, in the colony legislatures, correspond to the House of Lords in Great Britain, are not composed of an hereditary nobility. In some of the colonies, as in three of the governments of New England, those councils are not appointed by the king, but chosen by the representatives of the people. In none of the English colonies is there any hereditary nobility. In all of them, indeed, as in all other free countries, the descendant of an old colony family is more respected than an upstart of equal merit and fortune: but he is only more respected, and he has no privileges by which he can be troublesome to his neighbors. Before the commencement of the present disturbances, the colony assemblies had not only the legislative, but a part of the executive power. In Connecticut and Rhode Island they elected the governor. In the other colonies they appointed the revenue officers who collected the taxes imposed by those respective assemblies, to whom those officers were immediately responsible. There is more equality, therefore, among the English colonists than among the inhabitants of the mother country. Their manners are more republican, and their governments, those of three of the provinces of New England in particular, have hitherto been more republican too.

The absolute governments of Spain, Portugal, and France, on the contrary, take place in their colonies; and the discretionary powers which such governments commonly delegate to all their inferior officers are, on account of the great distance, naturally exercised there with more than ordinary violence. Under all absolute governments there is more liberty in the capital than in any other part of the country. The sovereign himself can never have either interest or inclination to pervert the order

of justice, or to oppress the great body of the people. In the capital his presence overawes more or less all his inferior officers, who in the remoter provinces, from whence the complaints of the people are less likely to reach him, can exercise their tyranny with much more safety. But the European colonies in America are more remote than the most distant provinces of the greatest empires which had ever been known before. The government of the English colonies is perhaps the only one which, since the world began, could give perfect security to the inhabitants of so very distant a province. The administration of the French colonies, however, has always been conducted with more gentleness and moderation than that of the Spanish and Portuguese. This superiority of conduct is suitable both to the character of the French nation, and to what forms the character of every nation, the nature of their government, which, though arbitrary and violent in comparison with that of Great Britain, is legal and free in comparison with those of Spain and Portugal.

It is in the progress of the North American colonies, however, that the superiority of the English policy chiefly appears. The progress of the sugar colonies of France has been at least equal, perhaps superior, to that of the greater part of those of England; and yet the sugar colonies of England enjoy a free government nearly of the same kind with that which takes place in her colonies of North America. But the sugar colonies of France are not discouraged, like those of England, from refining their own sugar; and, what is of still greater importance, the genius of their government naturally introduces a better management of their negro slaves.

In all European colonies the culture of the sugar cane is carried on by negro slaves. The constitution of those who have been born in the temperate climate of Europe, could not, it is supposed, support the labor of digging the ground under the burning sun of the West Indies; and the culture of the sugar cane, as it is managed at present, is all hand labor, though, in the opinion of many, the drill plow might be introduced into it with great advantage. But, as the profit and success of the cultivation which is

carried on by means of cattle, depend very much upon the good management of those cattle; so the profit and success of that which is carried on by slaves, must depend equally upon the good management of those slaves; and in the good management of their slaves the French planters, I think it is generally allowed, are superior to the English. The law, so far as it gives some weak protection to the slave against the violence of his master, is likely to be bettter executed in a colony where the government is in a great measure arbitrary, than in one where it is altogether free. In every country where the unfortunate law of slavery is established, the magistrate, when he protects the slave, intermeddles in some measure in the management of the private property of the master; and, in a free country, where the master is perhaps either a member of the colony assembly, or an elector of such a member, he dare not do this but with the greatest caution and circumspection. The respect which he is obliged to pay to the master, renders it more difficult for him to protect the slave. But in a country where the government is in a great measure arbitrary, where it is usual for the magistrate to intermeddle even in the management of the private property of individuals, and to send them, perhaps, a *lettre de cachet* if they do not manage it according to his liking, it is much easier for him to give some protection to the slave; and common humanity naturally disposes him to do so. The protection of the magistrate renders the slave less contemptible in the eyes of his master, who is thereby induced to consider him with more regard, and to treat him with more gentleness. Gentle usage renders the slave not only more faithful, but more intelligent, and therefore, upon a double account, more useful. He approaches more to the condition of a free servant, and may possess some degree of integrity and attachment to his master's interests, virtues which frequently belong to free servants, but which never can belong to a slave, who is treated as slaves commonly are in countries where the master is perfectly free and secure.

That the condition of a slave is better under an arbitrary than under a free government, is, I believe, supported by the history of all ages and nations. In the

Roman history, the first time we read of the magistrate interposing to protect the slave from the violence of his master, is under the emperors. When Vedius Pollio, in the presence of Augustus, ordered one of his slaves, who had committed a slight fault, to be cut into pieces, and thrown into his fish pond in order to feed his fishes, the emperor commanded him, with indignation, to emancipate immediately, not only that slave, but all the others that belonged to him. Under the republic no magistrate could have had authority enough to protect the slave, much less to punish the master.

The stock, it is to be observed, which has improved the sugar colonies of France, particularly the great colony of St. Domingo, has been raised almost entirely from the gradual improvement and cultivation of those colonies. It has been almost altogether the produce of the soil and of the industry of the colonists, or, what comes to the same thing, the price of that produce gradually accumulated by good management, and employed in raising a still greater produce. But the stock which has improved and cultivated the sugar colonies of England has, a great part of it, been sent out from England, and has by no means been altogether the produce of the soil and industry of the colonists. The prosperity of the English sugar colonies has been, in a great measure, owing to the great riches of England, of which a part has overflowed, if one may say so, upon those colonies. But the prosperity of the sugar colonies of France has been entirely owing to the good conduct of the colonists, which must therefore have had some superiority over that of the English; and this superiority has been remarked in nothing so much as in the good management of their slaves.

Such have been the general outlines of the policy of the different European nations with regard to their colonies.

The policy of Europe, therefore, has very little to boast of, either in the original establishment, or, so far as concerns their internal government, in the subsequent prosperity of the colonies of America.

Folly and injustice seem to have been the principles which presided over and directed the first project of estab-

lishing those colonies; the folly of hunting after gold and silver mines, and the injustice of coveting the possession of a country whose harmless natives, far from having ever injured the people of Europe, had received the first adventurers with every mark of kindness and hospitality.

The adventurers, indeed, who formed some of the later establishments, joined, to the chimerical project of finding gold and silver mines, other motives more reasonable and more laudable; but even these motives do very little honor to the policy of Europe.

The English Puritans, restrained at home, fled for freedom to America, and established there the four governments of New England. The English Catholics, treated with much greater injustice, established that of Maryland; the Quakers, that of Pennsylvania. The Portuguese Jews, persecuted by the Inquisition, stripped of their fortunes, and banished to Brazil, introduced, by their example, some sort of order and industry among the transported felons and strumpets, by whom that colony was originally peopled and taught them the culture of the sugar cane. Upon all these different occasions, it was not the wisdom and policy, but the disorder and injustice, of the European governments, which peopled and cultivated America.

In effectuating some of the most important of these establishments, the different governments of Europe had as little merit as in projecting them. The conquest of Mexico was the project, not of the council of Spain, but of a governor of Cuba; and it was effectuated by the spirit of the bold adventurer to whom it was intrusted, in spite of everything which that governor, who soon repented of having trusted such a person, could do to thwart it. The conquerors of Chili and Peru, and of almost all the other Spanish settlements upon the continent of America, carried out with them no other public encouragement, but a general permission to make settlements and conquests in the name of the King of Spain. Those adventures were all at the private risk and expense of the adventurers. The government of Spain contributed scarcely anything to any of them. That of

England contributed as little toward effectuating the establishment of some of its most important colonies in North America.

When those establishments were effectuated, and had become so considerable as to attract the attention of the mother country, the first regulations which she made with regard to them had always in view to secure to herself the monopoly of their commerce; to confine their market, and to enlarge her own at their expense and, consequently, rather to damp and discourage, than to quicken and forward the course of their prosperity. In the different ways in which this monopoly has been exercised, consists one of the most essential differences in the policy of the different European nations with regard to their colonies. The best of them all, that of England, is only somewhat less illiberal and oppressive than that of any of the rest.

In what way, therefore, has the policy of Europe contributed either to the first establishment, or to the present grandeur of the colonies of America? In one way, and in one way only, it has contributed a good deal. *Magna virum Mater!* It bred and formed the men who were capable of achieving such great actions, and of laying the foundation of so great an empire; and there is no other quarter of the world of which the policy is capable of forming, or has ever actually and in fact formed such men. The colonies owe to the policy of Europe the education and great views of their active and enterprising founders; and some of the greatest and most important of them, so far as concerns their internal government, owe to it scarcely anything else.

## PART III.

### Of the Advantages Which Europe has Derived from the Discovery of America, and from That of a Passage to the East Indies by the Cape of Good Hope.

Such are the advantages which the colonies of America have derived from the policy of Europe.

What are those which Europe has derived from the discovery and colonization of America?

Those advantages may be divided, first, into the general advantages which Europe, considered as one great country, has derived from those great events; and, secondly, into the particular advantages which each colonizing country has derived from the colonies which particularly belong to it, in consequence of the authority or dominion which it exercises over them.

The general advantages which Europe, considered as one great country, has derived from the discovery and colonization of America, consist, first, in the increase of its enjoyments; and, secondly, in the augmentation of its industry.

The surplus produce of America, imported into Europe, furnishes the inhabitants of this great continent with a variety of commodities which they could not otherwise have possessed, some for conveniency and use, some for pleasure, and some for ornament, and thereby contributes to increase their enjoyments.

The discovery and colonization of America, it will readily be allowed, have contributed to augment the industry, first, of all the countries which trade to it directly; such as Spain, Portugal, France, and England; and, secondly, of all those which, without trading to it directly, send, through the medium of other countries, goods to it of their own produce; such as Austrian Flanders, and some provinces of Germany, which, through the medium of the

countries before mentioned, send to it a considerable quantity of linen and other goods. All such countries have evidently gained a more extensive market for their surplus produce, and must consequently have been encouraged to increase its quantity.

But, that those great events should likewise have contributed to encourage the industry of countries, such as Hungary and Poland, which may never, perhaps, have sent a single commodity of their own produec to America, is not, perhaps, altogether so evident. That those events have done so, however, cannot be doubted. Some part of the produce of America is consumed in Hungary and Poland, and there is some demand there for the sugar, chocolate, and tobacco, of that new quarter of the world. But those commodities must be purchased with something which is either the produce of the industry of Hungary and Poland, or with something which had been purchased with some part of that produce. Those commodities of America are new values, new equivalents, introduced into Hungary and Poland to be exchanged there for the surplus produce of those countries. By being carried thither they create a new and more extensive market for that surplus produce. They raise its value, and thereby contribute to encourage its increase. Though no part of it may ever be carried to America, it may be carried to other countries which purchase it with a part of their share of the surplus produce of America; and it may find a market by means of the circulation of that trade which was originally put into motion by the surplus produce of America.

Those great events may even have contributed to increase the enjoyments, and to augment the industry of countries which, not only never sent any commodities to America, but never received any from it. Even such countries may have received a greater abundance of other commodities from countries of which the surplus produce had been augmented by means of the American trade. This greater abundance, as it must necessarily have increased their enjoyments, so it must likewise have augmented their industry. A greater number of new equivalents of some kind or other must have been presented

to them to be exchanged for the surplus produce of that industry. A more extensive market must have been created for that surplus produce, so as to raise its value, and thereby encourage its increase. The mass of commodities annually thrown into the great circle of European commerce, and by its various revolutions annually distributed among all the different nations comprehended within it, must have been augmented by the whole surplus produce of America. A greater share of this greater mass, therefore, is likely to have fallen to each of those nations, to have increased their enjoyments, and augmented their industry.

The exclusive trade of the mother countries tends to diminish, or, at least, to keep down below what they would otherwise rise to, both the enjoyments and industry of all those nations in general, and of the American colonies in particular. It is a dead weight upon the action of one of the great springs which puts into motion a great part of the business of mankind. By rendering the colony produce dearer in all other countries, it lessens its consumption, and thereby cramps the industry of the colonies, and both the enjoyments and the industry of all other countries, which both enjoy less when they pay more for what they enjoy, and produce less when they get less for what they produce. By rendering the produce of all other countries dearer in the colonies, it cramps, in the same manner, the industry of all other countries, and both the enjoyments and the industry of the colonies. It is a clog which, for the supposed benefit of some particular countries, embarrasses the pleasures, and encumbers the industry of all other countries; but of the colonies more than of any other. It not only excludes, as much as possible, all other countries from one particular market; but it confines, as much as possible, the colonies to one particular market; and the difference is very great between being excluded from one particular market, when all others are open, and being confined to one particular market, when all others are shut up. The surplus produce of the colonies, however, is the original source of all that increase of enjoyments and industry which Europe derives from the discovery

and colonization of America; and the exclusive trade of the mother countries tends to render this source much less abundant than it otherwise would be.

The particular advantages which each colonizing country derives from the colonies which particularly belong to it, are of two different kinds; first, those common advantages which every empire derives from the provinces subject to its dominion; and, secondly, those peculiar advantages which are supposed to result from provinces of so very peculiar a nature as the European colonies of America.

The common advantages which every empire derives from the provinces subject to its dominion, consist, first, in the military force which they furnish for its defense; and, secondly, in the revenue which they furnish for the support of its civil government. The Roman colonies furnished occasionally both the one and the other. The Greek colonies, sometimes, furnished a military force; but seldom any revenue. They seldom acknowledged themselves subject to the dominion of the mother city. They were generally her allies in war, but very seldom her subjects in peace.

The European colonies of America have never yet furnished any military force for the defense of the mother country. Their military force has never yet been sufficient for their own defense; and in the different wars in which the mother countries have been engaged, the defense of their colonies has generally occasioned a very considerable distraction of the military force of those countries. In this respect, therefore, all the European colonies have, without exception, been a cause rather of weakness than of strength to their respective mother countries.

The colonies of Spain and Portugal only have contributed any revenue toward the defense of the mother country, or the support of her civil government. The taxes which have been levied upon those of other European nations, upon those of England in particular, have seldom been equal to the expense laid out upon them in time of peace, and never sufficient to defray that which they occasioned in time of war. Such colonies, therefore,

have been a source of expense and not of revenue to their respective mother countries

The advantages of such colonies to their respective mother countries, consist altogether in those peculiar advantages which are supposed to result from provinces of so very peculiar a nature as the European colonies of America; and the exclusive trade, it is acknowledged, is the sole source of all those peculiar advantages.

In consequence of this exclusive trade, all that part of the surplus produce of the English colonies, for example, which consists in what are called enumerated commodities, can be sent to no other country but England. Other countries must afterward buy it of her. It must be cheaper, therefore, in England than it can be in any other country, and must contribute more to increase the enjoyments of England than those of any other country. It must likewise contribute more to encourage her industry. For all those parts of her own surplus produce which England exchanges for those enumerated commodities, she must get a better price than any other countries can get for the like parts of theirs, when they exchange them for the same commodities. The manufactures of England, for example, will purchase a greater quantity of the sugar and tobacco of her own colonies, than the like manufactures of other countries can purchase of that sugar and tobacco. So far, therefore, as the manufactures of England and those of other countries are both to be exchanged for the sugar and tobacco of the English colonies, this superiority of price gives an encouragement to the former, beyond what the latter can in these circumstances enjoy. The exclusive trade of the colonies, therefore, as it diminishes, or, at least, keeps down below what they would otherwise rise to, both the enjoyments and the industry of the countries which do not possess it; so it gives an evident advantage to the countries which do possess it over those other countries.

This advantage, however, will, perhaps, be found to be rather what may be called a relative than an absolute advantage; and to give a superiority to the country which enjoys it, rather by depressing the industry and produce of

other countries, than by raising those of that particular country above what they would naturally rise to in the case of a free trade.

The tobacco of Maryland and Virginia, for example, by means of the monopoly which England enjoys of it, certainly comes cheaper to England than it can do to France, to whom England commonly sells a considerable part of it. But had France, and all other European countries been, at all times, allowed a free trade to Maryland and Virginia, the tobacco of those colonies might, by this time, have come cheaper than it actually does, not only to all those other countries, but likewise to England. The produce of tobacco, in consequence of a market so much more extensive than any which it has hitherto enjoyed, might, and probably would, by this time, have been so much increased as to reduce the profits of a tobacco plantation to their natural level with those of a corn plantation, which, it is supposed, they are still somewhat above. The price of tobacco might, and probably would, by this time, have fallen somewhat lower than it is at present. An equal quantity of the commodities either of England, or of those other countries, might have purchased in Maryland and Virginia a greater quantity of tobacco than it can do at present, and, consequently, have been sold there for so much a better price. So far as that weed, therefore, can, by its cheapness and abundance, increase the enjoyments or augment the industry either of England or of any other country, it would probably, in the case of a free trade, have produced both these effects in a somewhat greater degree than it can do at present. England, indeed, would not in this case have had any advantage over other countries. She might have bought the tobacco of her colonies somewhat cheaper, and, consequently, have sold some of her own commodities somewhat dearer than she actually does. But she could neither have bought the one cheaper nor sold the other dearer than any other country might have done. She might, perhaps, have gained an absolute, but she would certainly have lost a relative advantage.

In order, however, to obtain this relative advantage in the colony trade, in order to execute the invidious and

malignant project of excluding as much as possible other nations from any share in it, England, there are very probable reasons for believing, has not only sacrificed a part of the absolute advantage which she, as well as every other nation, might have derived from that trade, but has subjected herself both to an absolute and to a relative disadvantage in almost every other branch of trade.

When, by the act of navigation, England assumed to herself the monopoly of the colony trade, the foreign capitals which had before been employed in it were necessarily withdrawn from it. The English capital, which had before carried on but a part of it, was now to carry on the whole. The capital which had before supplied the colonies with but a part of the goods which they wanted from Europe, was now all that was employed to supply them with the whole. But it could not supply them with the whole, and the goods with which it did supply them were necessarily sold very dear. The capital which had before bought but a part of the surplus produce of the colonies, was now all that was employed to buy the whole. But it could not buy the whole at anything near the old price, and, therefore, whatever it did buy it necessarily bought very cheap. But in an employment of capital in which the merchant sold very dear and bought very cheap, the profit must have been very great, and much above the ordinary level of profit in other branches of trade. This superiority of profit in the colony trade could not fail to draw from other branches of trade a part of the capital which had before been employed in them. But this revulsion of capital, as it must have gradually increased the competition of capitals in the colony trade, so it must have gradually diminished that competition in all those other branches of trade; as it must have gradually lowered the profits of the one, so it must have gradually raised those of the other, till the profits of all came to a new level, different from and somewhat higher than that at which they had been before.

This double effect, of drawing capital from all other trades, and of raising the rate of profit somewhat higher

than it otherwise would have been in all trades, was not only produced by this monopoly upon its first establishment, but has continued to be produced by it ever since.

First, this monopoly has been continually drawing capital from all other trades to be employed in that of the colonies.

Though the wealth of Great Britain has increased very much since the establishment of the act of navigation, it certainly has not increased in the same proportion as that of the colonies. But the foreign trade of every country naturally increases in proportion to its wealth, its surplus produce in proportion to its whole produce; and Great Britain having engrossed to herself almost the whole of what may be called the foreign trade of the colonies, and her capital not having increased in the same proportion as the extent of that trade, she could not carry it on without continually withdrawing from other branches of trade some part of the capital which had before been employed in them, as well as withholding from them a great deal more which would otherwise have gone to them. Since the establishment of the act of navigation, accordingly, the colony trade has been continually increasing, while many other branches of foreign trade, particularly of that to other parts of Europe, have been continually decaying. Our manufactures for foreign sale, instead of being suited, as before the act of navigation, to the neighboring market of Europe, or to the more distant one of the countries which lie round the Mediterranean sea, have, the greater part of them, been accommodated to the still more distant one of the colonies, to the market in which they have the monopoly, rather than to that in which they have many competitors. The causes of decay in other branches of foreign trade, which, by Sir Matthew Decker and other writers, have been sought for in the excess and improper mode of taxation, in the high price of labor, in the increase of luxury, etc., may all be found in the over-growth of the colony trade. The mercantile capital of Great Britain, though very great, yet not being infinite; and though greatly increased since the act of navigation, yet not being increased in the same proportion as the colony trade, that trade could

not possibly be carried on without withdrawing some part of that capital from other branches of trade, nor consequently without some decay of those other branches.

England, it must be observed, was a great trading country, her mercantile capital was very great and likely to become still greater and greater every day, not only before the act of navigation had established the monopoly of the colony trade, but before that trade was very considerable. In the Dutch war, during the government of Cromwell, her navy was superior to that of Holland; and in that which broke out in the beginning of the reign of Charles II. it was at least equal, perhaps superior, to the united navies of France and Holland. Its superiority, perhaps, would scarcely appear greater in the present times; at least if the Dutch navy was to bear the same proportion to the Dutch commerce now which it did then. But this great naval power could not, in either of those wars, be owing to the act of navigation. During the first of them the plan of that act had been but just formed, and though before the breaking out of the second it had been fully enacted by legal authority; yet no part of it could have had time to produce any considerable effect, and least of all that part which established the exclusive trade to the colonies. Both the colonies and their trade were inconsiderable then in comparison of what they now are. The island of Jamaica was an unwholesome desert, little inhabited, and less cultivated. New York and New Jersey were in the possession of the Dutch; the half of St. Christopher's in that of the French. The island of Antigua, the two Carolinas, Pennsylvania, Georgia, and Nova Scotia were not planted. Virginia, Maryland, and New England were planted; and though they were very thriving colonies, yet there was not, perhaps, at that time, either in Europe or America, a single person who foresaw or even suspected the rapid progress which they have since made in wealth, population, and improvement. The island of Barbadoes, in short, was the only British colony of any consequence of which the condition at that time bore any resemblance to what it is at present. The trade of the colonies, of which England, even for some time after the act of navigation,

enjoyed but a part (for the act of navigation was not very strictly executed till several years after it was enacted), could not at that time be the cause of the great trade of England, nor of the great naval power which was supported by that trade. The trade which at that time supported that great naval power was the trade of Europe, and of the countries which lie round the Mediterranean sea. But the share which Great Britain at present enjoys of that trade could not support any such great naval power. Had the growing trade of the colonies been left free to all nations, whatever share of it might have fallen to Great Britain, and a very considerable share would probably have fallen to her, must have been all an addition to this great trade of which she was before in possession. In consequence of the monopoly, the increase of the colony trade has not so much occasioned an addition to the trade which Great Britain had before, as a total change in its direction.

Secondly, this monopoly has necessarily contributed to keep up the rate of profit in all the different branches of British trade higher than it naturally would have been, had all nations been allowed a free trade to the British colonies.

The monopoly of the colony trade, as it necessarily drew toward that trade a greater proportion of the capital of Great Britain than what would have gone to it of its own accord; so by the expulsion of all foreign capitals it necessarily reduced the whole quantity of capital employed in that trade below what it naturally would have been in the case of a free trade. But, by lessening the competition of capitals in that branch of trade, it necessarily raised the rate of profit in that branch. By lessening too the competition of British capitals in all other branches of trade, it necessarily raised the rate of British profit in all those other branches. Whatever may have been, at any particular period, since the establishment of the act of navigation, the state or extent of the mercantile capital of Great Britain, the monopoly of the colony trade must during the continuance of that state, have raised the ordinary rate of British profit higher than it otherwise would have been both in that and in all the other

branches of British trade. If, since the establishment of the act of navigation, the ordinary rate of British profit has fallen considerably, as it certainly has, it must have fallen still lower, had not the monopoly established by that act contributed to keep it up.

But whatever raises in any country the ordinary rate of profit higher than it otherwise would be, necessarily subjects that country both to an absolute and to a relative disadvantage in every branch of trade of which she has not the monopoly.

It subjects her to an absolute disadvantage: because in such branches of trade her merchants cannot get this greater profit, without selling dearer than they otherwise would do both the goods of foreign countries which they import into their own, and the goods of their own country which they export to foreign countries. Their own country must both buy dearer and sell dearer; must both buy less and sell less; must both enjoy less and produce less, than she otherwise would do.

It subjects her to a relative disadvantage; because in such branches of trade it sets other countries which are not subject to the same absolute disadvantage, either more above her or less below her than they otherwise would be. It enables them both to enjoy more and to produce more in proportion to what she enjoys and produces. It renders their superiority greater or their inferiority less than it otherwise would be. By raising the price of her produce above what it otherwise would be, it enables the merchants of other countries to undersell her in foreign markets, and thereby to jostle her out of almost all those branches of trade, of which she has not the monopoly.

Our merchants frequently complain of the high wages of British labor as the cause of their manufactures being undersold in foreign markets; but they are silent about the high profits of stock. They complain of the extravagant gain of other people; but they say nothing of their own. The high profits of British stock, however, may contribute toward raising the price of British manufactures in many cases as much, and in some perhaps more than the high wages of British labor.

It is in this manner that the capital of Great Britain, one may justly say, has partly been drawn and partly been driven from the greater part of the different branches of trade of which she has not the monopoly; from the trade of Europe in particular, and from that of the countries which lie round the Mediterranean sea.

It has partly been drawn from those branches of trade; by the attraction of superior profit in the colony trade in consequence of the continual increase of that trade, and of the continual insufficiency of the capital which had carried it on one year to carry it on the next.

It has partly been driven from them; by the advantage which the high rate of profit, established in Great Britain gives to other countries, in all the different branches of trade of which Great Britain has not the monopoly.

As the monopoly of the colony trade has drawn from those other branches a part of the British capital which would otherwise have been employed in them, so it has forced into them many foreign capitals which would never have gone to them, had they not been expelled from the colony trade. In those other branches of trade it has diminished the competition of British capitals, and thereby raised the rate of British profit higher than it otherwise would have been. On the contrary, it has increased the competition of foreign capitals, and thereby sunk the rate of foreign profit lower than it otherwise would have been. Both in the one way and in the other it must evidently have subjected Great Britain to a relative disadvantage in all those other branches of trade.

The colony trade, however, it may perhaps be said, is more advantageous to Great Britain than any other; and the monopoly, by forcing into that trade a greater proportion of the capital of Great Britain than what would otherwise have gone to it, has turned that capital into an employment more advantageous to the country than any other which it could have found.

The most advantageous employment of any capital to the country to which it belongs, is that which maintains there the greatest quantity of productive labor, and increases the most the annual produce of the land and labor

of that country. But the quantity of productive labor which any capital employed in the foreign trade of consumption can maintain, is exactly in proportion, it has been shown in the second book, to the frequency of its returns. A capital of a thousand pounds, for example, employed in a foreign trade of consumption, of which the returns are made regularly once in the year, can keep in constant employment, in the country to which it belongs, a quantity of productive labor equal to what a thousand pounds can maintain there for a year. If the returns are made twice or thrice in the year, it can keep in constant employment a quantity of productive labor equal to what two or three thousand pounds can maintain there for a year. A foreign trade of consumption carried on with a neighboring, is, upon this account, in general, more advantageous than one carried on with a distant country; and for the same reason a direct foreign trade of consumption, as it has likewise been shown in the second book, is in general more advantageous than a roundabout one.

But the monoply of the colony trade, so far as it has operated upon the employment of the capital of Great Britain, has in all cases forced some part of it from a foreign trade of consumption carried on with a neighboring, to one carried on with a more distant country, and in many cases from a direct foreign trade of consumption to a roundabout one.

First, the monopoly of the colony trade has in all cases forced some part of the capital of Great Britain from a foreign trade of consumption carried on with a neighboring, to one carried on with a more distant country.

It has, in all cases, forced some part of that capital from the trade with Europe, and with the countries which lie round the Mediterranean sea, to that with the more distant regions of America and the West Indies, from which the returns are necessarily less frequent, not only on account of the greater distance, but on account of the peculiar circumstances of those countries. New colonies, it has already been observed, are always understocked. Their capital is always much less than what they could employ with great profit and advantage

in the improvement and cultivation of their land. They have a constant demand, therefore, for more capital than they have of their own; and, in order to supply the deficiency of their own, they endeavor to borrow as much as they can of the mother country, to whom they are, therefore, always in debt. The most common way in which the colonists contract this debt is not by borrowing upon bond of the rich people of the mother country, though they sometimes do this too, but by running as much in arrear to their correspondents, who supply them with goods from Europe, as those correspondents will allow them. Their annual returns frequently do not amount to more than a third, and sometimes not to so great a proportion of what they owe. The whole capital, therefore, which their correspondents advance to them is seldom returned to Britain in less than three, and sometimes not in less than four or five years. But a British capital of a thousand pounds, for example, which is returned to Great Britain only once in five years, can keep in constant employment only one-fifth part of the British industry which it could maintain if the whole was returned once in the year; and, instead of the quantity of industry which a thousand pounds could maintain for a year, can keep in constant employment the quantity only which two hundred pounds can maintain for a year. The planter, no doubt, by the high price which he pays for the goods from Europe, by the interest upon the bills which he grants at distant dates, and by the commission upon the renewal of those which he grants at near dates, makes up, and probably more than makes up, all the loss which his correspondent can sustain by this delay. But, though he may make up the loss of his correspondent, he cannot make up that of Great Britain. In a trade of which the returns are very distant, the profit of the merchant may be as great or greater than in one in which they are very frequent and near; but the advantage of the country in which he resides, the quantity of productive labor constantly maintained there, the annual produce of the land and labor must always be much less. That the returns of the trade to America, and still more those of that to the West

Indies, are, in general, not only more distant, but more irregular, and more uncertain too, than those of the trade to any part of Europe, or even of the countries which lie round the Mediterranean sea, will readily be allowed, I imagine, by everybody who has any experience of those different branches of trade.

Secondly, the monopoly of the colony trade has, in many cases, forced some part of the capital of Great Britain from a direct foreign trade of consumption, into a roundabout one.

Among the enumerated commodities which can be sent to no other market but Great Britain, there are several of which the quantity exceeds very much the consumption of Great Britain, and of which a part, therefore, must be exported to other countries. But this cannot be done without forcing some part of the capital of Great Britain into a roundabout foreign trade of consumption. Maryland and Virginia, for example, send annually to Great Britain upward of ninety-six thousand hogsheads of tobacco, and the consumption of Great Britain is said not to exceed fourteen thousand. Upward of eighty-two thousand hogsheads, therefore, must be exported to other countries, to France, to Holland, and to the countries which lie round the Baltic and Mediterranean seas. But that part of the capital of Great Britain which brings those eighty-two thousand hogsheads to Great Britain, which reexports them from thence to those other countries, and which brings back from those other countries to Great Britain either goods or money in return, is employed in a roundabout foreign trade of consumption; and is necessarily forced into this employment in order to dispose of this great surplus. If we would compute in how many years the whole of this capital is likely to come back to Great Britain, we must add to the distance of the American returns that of the returns from those other countries. If, in the direct foreign trade of consumption which we carry on with America, the whole capital employed frequently does not come back in less than three or four years; the whole capital employed in this roundabout one is not likely to come back in less than four or five. If the one can keep in constant

employment but a third or a fourth part of the domestic industry which could be maintained by a capital returned once in the year, the other can keep in constant employment but a fourth or a fifth part of that industry. At some of the outports a credit is commonly given to those foreign correspondents to whom they export their tobacco. At the port of London, indeed, it is commonly sold for ready money. The rule is, WEIGH AND PAY. At the port of London, therefore, the final returns of the whole roundabout trade are more distant than the returns from America by the time only which the goods may lie unsold in the warehouse; where, however, they may sometimes lie long enough. But, had not the colonies been confined to the market of Great Britain for the sale of their tobacco, very little more of it would probably have come to us than what was necessary for the home consumption. The goods which Great Britain purchases at present for her own consumption with the great surplus of tobacco which she exports to other countries, she would, in this case, probably have purchased with the immediate produce of her own industry, or with some part of her own manufactures. That produce, those manufactures, instead of being almost entirely suited to one great market, as at present, would probably have been fitted to a great number of smaller markets. Instead of one great roundabout foreign trade of consumption, Great Britain would probably have carried on a great number of small direct foreign trades of the same kind. On account of the frequency of the returns, a part and probably but a small part, perhaps not above a third or a fourth, of the capital which at present carries on this great roundabout trade, might have been sufficient to carry on all those small direct ones, might have kept in constant employment an equal quantity of British industry, and have equally supported the annual produce of the land and labor of Great Britain. All the purposes of this trade being, in this manner, answered by a much smaller capital, there would have been a large spare capital to apply to other purposes; to improve the lands, to increase the manufactures, and to extend the commerce of Great Britain; to come into competition at least

with the other British capitals employed in all those different ways, to reduce the rate of profit in them all, and thereby to give to Great Britain, in all of them, a superiority over other countries, still greater than what she at present enjoys.

The monopoly of the colony trade too has forced some part of the capital of Great Britain from all foreign trade of consumption to a carrying trade; and, consequently, from supporting more or less the industry of Great Britain, to be employed altogether in supporting partly that of the colonies, and partly that of some other countries.

The goods, for example, which are annually purchased with the great surplus of eighty-two thousand hogsheads of tobacco annually reexported from Great Britain, are not all consumed in Great Britain. Part of them, linen from Germany and Holland, for example, is returned to the colonies for their particular consumption. But that part of the capital of Great Britain which buys the tobacco with which this linen is afterward bought, is necessarily withdrawn from supporting the industry of Great Britain, to be employed altogether in supporting, partly that of the colonies, and partly that of the particular countries who pay for this tobacco with the produce of their own industry.

The monopoly of the colony trade besides, by forcing toward it a much greater proportion of the capital of Great Britain than what would naturally have gone to it, seems to have broken altogether that natural balance which would otherwise have taken place among all the different branches of British industry. The industry of Great Britain, instead of being accommodated to a great number of small markets, has been principally suited to one great market. Her commerce, instead of running in a great number of small channels, has been taught to run principally in one great channel. But the whole system of her industry and commerce has thereby been rendered less secure; the whole state of her body politic less healthful, than it otherwise would have been. In her present condition Great Britain resembles one of those unwholesome bodies in which some of the vital parts are over-

grown, and which, upon that account, are liable to many dangerous disorders scarce incident to those in which all the parts are more properly proportioned. A small stop in that great blood-vessel, which has been artificially swelled beyond its natural dimensions, and through which an unnatural proportion of the industry and commerce of the country has been forced to circulate, is very likely to bring on the most dangerous disorders upon the whole body politic. The expectation of a rupture with the colonies, accordingly, has struck the people of Great Britain with more terror than they ever felt for a Spanish armada, or a French invasion. It was this terror, whether well or ill grounded, which rendered the repeal of the Stamp Act, among the merchants at least, a popular measure. In the total exclusion from the colony market, was it to last only for a few years, the greater part of our merchants used to fancy that they foresaw an entire stop to their trade; the greater part of our master manufacturers, the entire ruin of their business; and the greater part of our workmen, an end of their employment. A rupture with any of our neighbors upon the continent, though likely too to occasion some stop or interruption in the employments of some of all these different orders of people, is foreseen, however, without any such general emotion. The blood of which the circulation is stopped in some of the smaller vessels, easily disgorges itself into the greater, without occasioning any dangerous disorder; but, when it is stopped in any of the greater vessels, convulsions, apoplexy, or death, are the immediate and unavoidable consequences. If but one of those overgrown manufactures, which by means either of bounties or of the monopoly of the home and colony markets, have been artificially raised up to an unnatural height, finds some small stop or interruption in its employment, it frequently occasions a mutiny and disorder alarming to government, and embarrassing even to the deliberations of the legislature. How great, therefore, would be the disorder and confusion, it was thought, which must necessarily be occasioned by a sudden and entire stop in the employment of so great a proportion of our principal manufacturers?

Some moderate and gradual relaxation of the laws which give to Great Britain the exclusive trade to the colonies, till it is rendered in a great measure free, seems to be the only expedient which can, in all future times, deliver her from this danger, which can enable her or even force her to withdraw some part of her capital from this overgrown employment, and to turn it, though with less profit, toward other employments; and which, by gradually diminishing one branch of her industry and gradually increasing all the rest, can by degrees restore all the different branches of it to that natural, healthful, and proper proportion which perfect liberty necessarily establishes, and which perfect liberty can alone preserve. To open the colony trade all at once to all nations, might not only occasion some transitory inconvenience, but a great permanent loss to the greater part of those whose industry or capital is at present engaged in it. The sudden loss of the employment even of the ships which import the eighty-two thousand hogsheads of tobacco, which are over and above the consumption of Great Britain, might alone be felt very sensibly. Such are the unfortunate effects of all the regulations of the mercantile system! They not only introduce very dangerous disorders into the state of the body politic, but disorders which it is often difficult to remedy, without occasioning for a time at least, still greater disorders. In what manner, therefore, the colony trade ought gradually to be opened; what are the restraints which ought first, and what are those which ought last to be taken away; or in what manner the natural system of perfect liberty and justice ought gradually to be restored, we must leave to the wisdom of future statesmen and legislators to determine.

Five different events, unforeseen and unthought of, have very fortunately concurred to hinder Great Britain from feeling, so sensibly as it was generally expected she would, the total exclusion which has now taken place for more than a year (from the first of December, 1774) from a very important branch of the colony trade, that of the twelve associated provinces of North America. First, those colonies, in preparing themselves for their non-importa-

tion agreement, drained Great Britain completely of all the commodities which were fit for their market: secondly, the extraordinary demand of the Spanish Flota has, this year, drained Germany and the North of many commodities, linen in particular, which used to come into competition, even in the British market, with the manufactures of Great Britain: thirdly, the peace between Russia and Turkey has occasioned an extraordinary demand from the Turkish market, which during the distress of the country, and while a Russian fleet was cruising in the Archipelago, had been very poorly supplied: fourthly, the demand of the North of Europe for the manufactures of Great Britain, has been increasing from year to year for some time past: and fifthly, the late partition and consequential pacification of Poland, by opening the market of that great country, have this year added an extraordinary demand from thence to the increasing demand of the North. These events are all, except the fourth, in their nature transitory and accidental, and the exclusion from so important a branch of the colony trade, if unfortunately it should continue much longer, may still occasion some degree of distress. This distress, however, as it will come on gradually, will be felt much less severely than if it had come on all at once; and, in the meantime, the industry and capital of the country may find a new employment and direction, so as to prevent this distress from ever rising to any considerable height.

The monopoly of the colony trade, therefore, so far as it has turned toward that trade a greater proportion of the capital of Great Britain than what would otherwise have gone to it, has in all cases turned it, from a foreign trade of consumption with a neighboring, into one with a more distant country; in many cases from a direct foreign trade of consumption, into a roundabout one; and in some cases, from all foreign trade of consumption, into a carrying trade. It has in all cases, therefore, turned it, from a direction in which it would have maintained a greater quantity of productive labor, into one in which it can maintain a much smaller quantity. By suiting, besides, to one particular market only, so great

a part of the industry and commerce of Great Britain, it has rendered the whole state of that industry and commerce more precarious and less secure, than if their produce had been accommodated to a greater variety of markets.

We must carefully distinguish between the effects of the colony trade and those of the monopoly of that trade. The former are always and necessarily beneficial; the latter always and necessarily hurtful. But the former are so beneficial, that the colony trade, though subject to a monopoly, and notwithstanding the hurtful effects of that monopoly, is still upon the whole beneficial, and greatly beneficial, though a good deal less so than it otherwise would be.

The effect of the colony trade in its natural and free state, is to open a great, though distant market for such parts of the produce of British industry as may exceed the demand of the markets nearer home, of those of Europe, and of the countries which lie round the Mediterranean sea. In its natural and free state, the colony trade, without drawing from those markets any part of the produce which had ever been sent to them, encourages Great Britain to increase the surplus continually, by continually presenting new equivalents to be exchanged for it. In its natural and free state, the colony trade tends to increase the quantity of productive labor in Great Britain, but without altering in any respect the direction of that which had been employed there before. In the natural and free state of the colony trade, the competition of all other nations would hinder the rate of profit from rising above the common level either in the new market, or in the new employment. The new market, without drawing anything from the old one, would create, if one may say so, a new produce for its own supply; and that new produce would constitute a new capital for carrying on the new employment, which, in the same manner, would draw nothing from the old one.

The monopoly of the colony trade, on the contrary, by excluding the competition of other nations, and thereby raising the rate of profit both in the new market and in the new employment, draws produce from the old market

and capital from the old employment. To augment our share of the colony trade beyond what it otherwise would be, is the avowed purpose of the monopoly. If our share of that trade were to be no greater with, than it would have been without the monopoly, there could have been no reason for establishing the monopoly. But whatever forces into a branch of trade of which the returns are slower and more distant than those of the greater part of other trades, a greater proportion of the capital of any country, than what of its own accord would go to that branch, necessarily renders the whole quantity of productive labor annually maintained there, the whole annual produce of the land and labor of that country, less than they otherwise would be. It keeps down the revenue of the inhabitants of that country, below what it would naturally rise to, and thereby diminishes their power of accumulation. It not only hinders, at all times, their capital from maintaining so great a quantity of productive labor as it would otherwise maintain, but it hinders it from increasing so fast as it would otherwise increase, and consequently from maintaining a still greater quantity of productive labor.

The natural good effects of the colony trade, however, more than counterbalance to Great Britain the bad effects of the monopoly, so that, monopoly and altogether, that trade, even as it is carried on at present, is not only advantageous, but greatly advantageous. The new market and the new employment which are opened by the colony trade, are of much greater extent than that portion of the old market and of the old employment which is lost by the monopoly. The new produce and the new capital which has been created, if one may say so, by the colony trade, maintain in Great Britain a greater quantity of productive labor, than what can have been thrown out of employment by the revulsion of capital from other trades of which the returns are more frequent. If the colony trade, however, even as it is carried on at present, is advantageous to Great Britain, it is not by means of the monopoly, but in spite of the monopoly.

It is rather for the manufactured than for the rude produce of Europe, that the colony trade opens a new

market. Agriculture is the proper business of all new colonies; a business which the cheapness of land renders more advantageous than any other. They abound, therefore, in the rude produce of land, and instead of importing it from other countries, they have generally a large surplus to export. In new colonies, agriculture either draws hands from all other employments, or keeps them from going to any other employment. There are few hands to spare for the necessary, and none for the ornamental manufactures. The greater part of the manufactures of both kinds, they find it cheaper to purchase of other countries than to make for themselves. It is chiefly by encouraging the manufactures of Europe that the colony trade indirectly encourages its agriculture. The manufacturers of Europe, to whom that trade gives employment, constitute a new market for the produce of the land; and the most advantageous of all markets: the home market for the corn and cattle, for the bread and butchers' meat of Europe, is thus greatly extended by means of the trade to America.

But that the monopoly of the trade of populous and thriving colonies is not alone sufficient to establish, or even to maintain manufactures in any country, the examples of Spain and Portugal sufficiently demonstrate. Spain and Portugal were manufacturing countries before they had any considerable colonies. Since they had the richest and most fertile in the world, they have both ceased to be so.

In Spain and Portugal, the bad effects of the monopoly aggravated by other causes, have, perhaps, nearly over-balanced the natural good effects of the colony trade. These causes seem to be other monopolies of different kinds; the degradation of the value of gold and silver below what it is in most other countries; the exclusion from foreign markets by improper taxes upon exportation, and the narrowing of the home market, by still more improper taxes upon the transportation of goods from one part of the country to another; but above all, that irregular and partial administration of justice, which often protects the rich and powerful debtor from the pursuit of his injured creditor, and which makes

the industrious part of the nation, afraid to prepare goods for the consumption of those haughty and great men, to whom they dare not refuse to sell upon credit, and from whom they are altogether uncertain of repayment.

In England, on the contrary, the natural good effects of the colony trade, assisted by other causes have in a great measure conquered the bad effects of the monopoly. These causes seem to be the general liberty of trade, which, notwithstanding some restraints, is at least equal, perhaps superior, to what it is in any other country; the liberty of exporting, duty free, almost all sorts of goods which are the produce of domestic industry, to almost any foreign country; and what, perhaps, is of still greater importance, the unbounded liberty of transporting them from any one part of our own country to any other, without being obliged to give any account to any public office, without being liable to question or examination of any kind; but above all, that equal and impartial administration of justice which renders the rights of the meanest British subject respectable to the greatest, and which, by securing to every man the fruits of his own industry, gives the greatest and most effectual encouragement to every sort of industry.

If the manufactures of Great Britain, however, have been advanced, as they certainly have, by the colony trade, it has not been by means of the monopoly of that trade, but in spite of the monopoly. The effect of the monopoly has been, not to augment the quantity, but to alter the quality and shape of a part of the manufactures of Great Britain, and to accommodate to a market, from which the returns are slow and distant, what would otherwise have been accomodated to one from which the returns are frequent and near. Its effect has consequently been to turn a part of the capital of Great Britain from an employment in which it would have maintained a greater quantity of manufacturing industry, to one in which it maintains a much smaller, and thereby to diminish, instead of increasing, the whole quantity of manufacturing industry maintained in Great Britain.

The monopoly of the colony trade, therefore, like all

the other mean and malignant expedients of the mercantile system, depresses the industry of all other countries, but chiefly that of the colonies, without in the least increasing, but on the contrary diminishing, that of the country in whose favor it is established.

The monopoly hinders the capital of that country, whatever may at any particular time be the extent of that capital, from maintaining so great a quantity of productive labor as it would otherwise maintain, and from affording so great a revenue to the industrious inhabitants as it would otherwise afford. But as capital can be increased only by savings from revenue, the monopoly, by hindering it from affording so great a revenue as it would otherwise afford, necessarily hinders it from increasing so fast as it would otherwise increase, and consequently from maintaining a still greater quantity of productive labor, and affording a still greater revenue to the industrious inhabitants of that country. One great original source of revenue, therefore, the wages of labor, the monopoly must necessarily have rendered at all times less abundant than it otherwise would have been.

By raising the rate of mercantile profit, the monopoly discourages the improvement of land. The profit of improvement depends upon the difference between what the land actually produces, and what, by the application of a certain capital, it can be made to produce. If this difference affords a greater profit than what can be drawn from an equal capital in any mercantile employment, the improvement of land will draw capital from all mercantile employments. If the profit is less, mercantile employments will draw capital from the improvement of land. Whatever therefore raises the rate of mercantile profit, either lessens the superiority or increases the inferiority of the profit of improvement; and in the one case hinders capital from going to improvement, and in the other draws capital from it. But by discouraging improvement, the monopoly necessarily retards the natural increase of another great original source of revenue, the rent of land. By raising the rate of profit too, the monopoly necessarily keeps up the market rate of interest higher than it otherwise would be. But the price of land

in proportion to the rent which it affords, the number of years' purchase which is commonly paid for it, necessarily falls as the rate of interest rises, and rises as the rate of interest falls. The monopoly, therefore, hurts the interest of the landlord in two different ways, by retarding the natural increase, first of his rent, and, secondly, of the price which he would get for his land in proportion to the rent which it affords.

The monopoly, indeed, raises the rate of mercantile profit, and thereby augments somewhat the gain of our merchants. But as it obstructs the natural increase of capital, it tends rather to diminish than to increase the sum total of the revenue which the inhabitants of the country derive from the profits of stock; a small profit upon a great capital generally affording a greater revenue than a great profit upon a small one. The monopoly raises the rate of profit, but it hinders the sum of profit from rising so high as it otherwise would do.

All the original sources of revenue, the wages of labor, the rent of land, and the profits of stock, the monopoly renders much less abundant than they otherwise would be. To promote the little interest of one little order of men in one country, it hurts the interest of all other orders of men in that country, and of all the men in all other countries.

It is solely by raising the ordinary rate of profit that the monopoly either has proved or could prove advantageous to any one particular order of men. But besides all the bad effects to the country in general, which have already been mentioned as necessarily resulting from a high rate of profit; there is one more fatal, perhaps, than all these put together, but which, if we may judge from experience, is inseparably connected with it. The high rate of profit seems everywhere to destroy that parsimony which in other circumstances is natural to the character of the merchant. When profits are high, that sober virtue seems to be superfluous, and expensive luxury to suit better the affluence of his situation. But the owners of the great mercantile capitals are necessarily the leaders and conductors of the whole industry of every nation, and their example has a much greater

influence upon the manners of the whole industrious part of it than that of any other order of men. If his employer is attentive and parsimonious, the workman is very likely to be so too; but if the master is dissolute and disorderly, the servant who shapes his work according to the pattern which his master prescribes to him, will shape his life too according to the example which he sets him. Accumulation is thus prevented in the hands of all those who are naturally the most disposed to accumulate; and the funds destined for the maintenance of productive labor receive no augmentation from the revenue of those who ought naturally to augment them the most. The capital of the country, instead of increasing, gradually dwindles away, and the quantity of productive labor maintained in it grows every day less and less. Have the exorbitant profits of the merchants of Cadiz and Lisbon augmented the capital of Spain and Portugal? Have they alleviated the poverty, have they promoted the industry of those two beggarly countries? Such has been the tone of mercantile expense in those two trading cities, that those exorbitant profits, far from augmenting the general capital of the country, seem scarce to have been sufficient to keep up the capitals upon which they were made. Foreign capitals are every day intruding themselves, if I may say so, more and more into the trade of Cadiz and Lisbon. It is to expel those foreign capitals from a trade which their own grows every day more and more insufficient for carrying on, that the Spaniards and Portuguese endeavor every day to straiten more and more the galling bands of their absurd monopoly. Compare the mercantile manners of Cadiz and Lisbon with those of Amsterdam, and you will be sensible how differently the conduct and character of merchants are affected by the high and by the low profits of stock. The merchants of London, indeed, have not yet generally become such magnificent lords as those of Cadiz and Lisbon; but neither are they in general such attentive and parsimonious burghers as those of Amsterdam. They are supposed, however, many of them, to be a good deal richer than the greater part of the former, and not quite so rich as many of the latter. But the rate

of their profit is commonly much lower than that of the former, and a good deal higher than that of the latter. Light come light go, says the proverb; and the ordinary tone of expense seems everywhere to be regulated, not so much according to the real ability of spending, as to the supposed facility of getting money to spend.

It is thus that the single advantage which the monopoly procures to a single order of men, is in many different ways hurtful to the general interest of the country.

To found a great empire for the sole purpose of raising up a people of customers, may at first sight appear a project fit only for a nation of shopkeepers. It is, however, a project altogether unfit for a nation of shopkeepers; but extremely fit for a nation whose government is influenced by shopkeepers. Such statesmen, and such statesmen only, are capable of fancying that they will find some advantage in employing the blood and treasure of their fellow-citizens, to found and maintain such an empire. Say to a shopkeeper, Buy me a good estate, and I shall always buy my clothes at your shop, even though I should pay somewhat dearer than what I can have them for at other shops; and you will not find him very forward to embrace your proposal. But should any other person buy you such an estate, the shopkeeper will be much obliged to your benefactor if he would enjoin you to buy all your clothes at his shop. England purchased from some of her subjects, who found themselves uneasy at home, a great estate in a distant country. The price, indeed, was very small, and instead of thirty years' purchase, the ordinary price of land in the present times, it amounted to little more than the expense of the different equipments which made the first discovery, reconnoitred the coast and took a fictitious possession of the country. The land was good and of great extent, and the cultivators having plenty of good ground to work upon, and being for some time at liberty to sell their produce where they pleased, became in the course of little more than thirty or forty years (between 1620 and 1660) so numerous and thriving a people that the shopkeepers and other traders of England wished to secure to themselves the monopoly of their custom. Without pretending, therefore,

that they had paid any part, either of the original purchase-money, or of the subsequent expense of improvement, they petitioned the Parliament that the cultivators of America might for the future be confined to their shop; first, for buying all the goods which they wanted from Europe; and, secondly, for selling all such parts of their own produce as those traders might find it convenient to buy. For they did not find it convenient to buy every part of it. Some parts of it imported into England might have interfered with some of the trades which they themselves carried on at home. Those particular parts of it, therefore, they were willing that the colonists should sell where they could; the farther off the better; and upon that account proposed that their market should be confined to the countries south of Cape Finisterre. A clause in the famous act of navigation established this truly shopkeeper proposal into a law.

The maintenance of this monopoly has hitherto been the principal, or more properly perhaps the sole end and purpose of the dominion which Great Britain assumes over her colonies. In the exclusive trade, it is supposed, consists the great advantage of provinces, which have never yet afforded either revenue or military force for the support of the civil government, or the defense of the mother country. The monopoly is the principal badge of their dependency, and it is the sole fruit which has hitherto been gathered from that dependency. Whatever expense Great Britain has hitherto laid out in maintaining this dependency, has really been laid out in order to support this monopoly. The expense of the ordinary peace establishment of the colonies amounted, before the commencement of the present disturbances, to the pay of twenty regiments of foot; to the expense of the artillery, stores, and extraordinary provisions with which it was necessary to supply them; and to the expense of a very considerable naval force which was constantly kept up, in order to guard, from the smuggling vessels of other nations, the immense coast of North America, and that of our West Indian islands. The whole expense of this peace establishment was a charge upon the revenue of Great Britain, and was, at the same time, the smallest

part of what the dominion of the colonies has cost the mother country. If we would know the amount of the whole, we must add to the annual expense of this peace establishment the interest of the sums which, in consequence of her considering her colonies as provinces subject to her dominion, Great Britain has upon different occasions laid out upon their defense. We must add to it, in particular, the whole expense of the late war, and a great part of that of the war which preceded it. The late war was altogether a colony quarrel, and the whole expense of it, in whatever part of the world it may have been laid out, whether in Germany or the East Indies, ought justly to be stated to the account of the colonies. It amounted to more than ninety millions sterling, including not only the new debt which was contracted, but the two shillings in the pound additional land tax, and the sums which were every year borrowed from the sinking fund. The Spanish war which began in 1739, was principally a colony quarrel. Its principal object was to prevent the search of the colony ships which carried on a contraband trade with the Spanish main. This whole expense is, in reality, a bounty which has been given in order to support a monopoly. The pretended purpose of it was to encourage the manufactures, and to increase the commerce of Great Britain. But its real effect has been to raise the rate of mercantile profit, and to enable our merchants to turn into a branch of trade, of which the returns are more slow and distant than those of the greater parts of other trades, a greater proportion of their capital than they otherwise would have done; two events which if a bounty could have prevented, it might perhaps have been very well worth while to give such a bounty.

Under the present system of management, therefore, Great Britain derives nothing but loss from the dominion which she assumes over her colonies.

To propose that Great Britain should voluntarily give up all authority over her colonies, and leave them to elect their own magistrates, to enact their own laws, and to make peace and war as they might think proper, would be to propose such a measure as never was, and

never will be adopted by any nation in the world. No nation ever voluntarily gave up the dominion of any province; how troublesome soever it might be to govern it, and how small soever the revenue which it afforded might be in proportion to the expense which it occasioned. Such sacrifices, though they might frequently be agreeable to the interest, are always mortifying to the pride of every nation, and what is perhaps of still greater consequence, they are always contrary to the private interest of the governing part of it, who would thereby be deprived of the disposal of many places of trust and profit, of many opportunities of acquiring wealth and distinction, which the possession of the most turbulent, and, to the great body of the people, the most unprofitable province seldom fails to afford. The most visionary enthusiasts would scarcely be capable of proposing such a measure, with any serious hopes at least of its ever being adopted. If it were adopted, however, Great Britain would not only be immediately freed from the whole annual expense of the peace establishment of the colonies, but might settle with them such a treaty of commerce as would effectually secure to her a free trade, more advantageous to the great body of the people, though less so to the merchants, than the monopoly which she at present enjoys. By thus parting good friends, the natural affection of the colonies to the mother country, which, perhaps, our late dissensions have well nigh extinguished, would quickly revive. It might dispose them not only to respect, for whole centuries together, that treaty of commerce which they had concluded with us at parting, but to favor us in war as well as in trade, and, instead of turbulent and factious subjects, to become our most faithful, affectionate, and generous allies; and the same sort of parental affection on the one side, and filial respect on the other, might revive between Great Britain and her colonies, which used to subsist between those of ancient Greece and the mother city from which they descended.

In order to render any province advantageous to the empire to which it belongs, it ought to afford, in time of peace, a revenue to the public sufficient not only for

defraying the whole expense of its own peace establishment, but for contributing its proportion to the support of the general government of the empire. Every province necessarily contributes, more or less, to increase the expense of that general government. If any particular province, therefore, does not contribute its share toward defraying this expense, an unequal burden must be thrown upon some other part of the empire. The extraordinary revenue too, which every province affords to the public in time of war, ought, from parity of reason, to bear the same proportion to the extraordinary revenue of the whole empire which its ordinary revenue does in time of peace. That neither the ordinary nor the extraordinary revenue which Great Britain derives from her colonies, bears this proportion to the whole revenue of the British empire, will readily be allowed. The monopoly, it has been supposed, indeed, by increasing the private revenue of the people of Great Britain, and thereby enabling them to pay greater taxes, compensates the deficiency of the public revenue of the colonies. But this monopoly, I have endeavored to show, though a very grievous tax upon the colonies, and though it may increase the revenue of a particular order of men in Great Britain, diminishes instead of increasing that of the great body of the people; and consequently diminishes instead of increasing the ability of the great body of the people to pay taxes. The men too, whose revenue the monopoly increases, constitute a particular order, which it is both absolutely impossible to tax beyond the proportion of other orders, and extremely impolitic even to attempt to tax beyond that proportion, as I shall endeavor to show in the following book. No particular resource, therefore, can be drawn from this particular order.

The colonies may be taxed either by their own assemblies, or by the Parliament of Great Britain.

That the colony assemblies can ever be so managed as to levy upon their constituents a public revenue sufficient, not only to maintain at all times their own civil and military establishment, but to pay their proper proportion of the expense of the general government of the British Empire, seems not very probable. It was a long time

before even the Parliament of England, though placed immediately under the eye of the sovereign, could be brought under such a system of management, or could be rendered sufficiently liberal in their grants for supporting the civil and military establishments even of their own country. It was only by distributing among the particular members of Parliament, a great part either of the offices, or of the disposal of the offices arising from the civil and military establishment, that such a system of management could be established even with regard to the Parliament of England. But the distance of the colony assemblies from the eye of the sovereign, their number, their dispersed situation, and their various constitutions, would render it very difficult to manage them in the same manner, even though the sovereign had the same means of doing it; and those means are wanting. It would be absolutely impossible to distribute among all the leading members of all the colony assemblies such a share, either of the offices or of the disposal of the offices arising from the general government of the British Empire, as to dispose them to give up their popularity at home, and to tax their constituents for the support of that general government, of which almost the whole emoluments were to be divided among people who were strangers to them. The unavoidable ignorance of administration, besides concerning the relative importance of the different members of those different assemblies, the offenses which must frequently be given, the blunders which must constantly be committed in attempting to manage them in this manner, seems to render such a system of management altogether impracticable with regard to them.

The colony assemblies, besides, cannot be supposed the proper judges of what is necessary for the defense and support of the whole empire. The care of that defense and support is not intrusted to them. It is not their business, and they have no regular means of information concerning it. The assembly of a province, like the vestry of a parish, may judge very properly concerning the affairs of its own particular district; but can have no proper means of judging concerning those

of the whole empire. It cannot even judge properly concerning the proportion which its own province bears to the whole empire; or concerning the relative degree of its wealth and importance, compared with the other provinces; because those other provinces are not under the inspection and superintendency of the assembly of a particular province. What is necessary for the defense and support of the whole empire, and in what proportion each part ought to contribute, can be judged of only by that assembly which inspects and superintends the affairs of the whole empire.

It has been proposed, accordingly, that the colonies should be taxed by requisition, the Parliament of Great Britain determining the sum which each colony ought to pay, and the provincial assembly assessing and levying it in the way that suited best the circumstances of the province. What concerned the whole empire would in this way be determined by the assembly which inspects and superintends the affairs of the whole empire; and the provincial affairs of each colony might still be regulated by its own assembly. Though the colonies should in this case have no representatives in the British Parliament, yet, if we may judge by experience, there is no probability that the parliamentary requisition would be unreasonable. The Parliament of England has not upon any occasion shown the smallest disposition to overburden those parts of the empire which are not represented in Parliament. The islands of Guernsey and Jersey, without any means of resisting the authority of Parliament, are more lightly taxed than any part of Great Britain. Parliament in attempting to exercise its supposed right, whether well or ill grounded, of taxing the colonies, has never hitherto demanded of them anything which even approached to a just proportion to what was paid by their fellow-subjects at home. If the contribution of the colonies, besides, was to rise or fall in proportion to the rise or fall of the land tax, Parliament could not tax them without taxing at the same time its own constituents, and the colonies might in this case be considered as virtually represented in Parliament.

Examples are not wanting of empires in which all the different provinces are not taxed, if I may be allowed

the expression, in one mass; but in which the sovereign regulates the sum which each province ought to pay, and in some provinces assesses and levies it as he thinks proper; while in others, he leaves it to be assessed and and levied as the respective states of each province shall determine. In some provinces of France, the king not only imposes what taxes he thinks proper, but assesses and levies them in the way he thinks proper. From others he demands a certain sum, but leaves it to the states of each province to assess and levy that sum as they think proper. According to the scheme of taxing by requisition, the Parliament of Great Britain would stand nearly in the same situation toward the colony assemblies, as the king of France does toward the states of those provinces which still enjoy the privilege of having states of their own, the provinces of France which are supposed to be the best governed.

But though, according to this scheme, the colonies could have no just reason to fear that their share of the public burdens should ever exceed the proper proportion to that of their fellow-citizens at home, Great Britain might have just reason to fear that it never would amount to that proper proportion. The Parliament of Great Britain has not for some time past had the same established authority in the colonies which the French king has in those provinces of France which still enjoy the privilege of having states of their own. The colony assemblies, if they were not very favorably disposed (and unless more skillfully managed than they ever have been hitherto, they are not very likely to be so), might still find many pretenses for evading or rejecting the most reasonable requisitions of Parliament. A French war breaks out, we shall suppose; ten millions must immediately be raised in order to defend the seat of the empire. This sum must be borrowed upon the credit of some parliamentary fund mortgaged for paying the interest. Part of this fund Parliament proposes to raise by a tax to be levied in Great Britain, and part of it, by a requisition to all the different colony assemblies of America and the West Indies. Would people readily advance their money upon the credit of a fund, which partly

depended upon the good humor of all those assemblies, far distant from the seat of the war, and sometimes, perhaps, thinking themselves not much concerned in the event of it? Upon such a fund no more money would probably be advanced than what the tax to be levied in Great Britain might be supposed to answer for. The whole burden of the debt contracted on account of the war would in this manner fall, as it always has done hitherto, upon Great Britain; upon a part of the empire, and not upon the whole empire. Great Britain is, perhaps, since the world began, the only state which, as it has extended its empire, has only increased its expense without once augmenting its resources. Other states have generally disburdened themselves upon their subject and subordinate provinces of the most considerable part of the expense of defending the empire. Great Britain has hitherto suffered her subject and subordinate provinces to disburden themselves upon her of almost this whole expense. In order to put Great Britain upon a footing of equality with her own colonies, which the law has hitherto supposed to be subject and subordinate, it seems necessary, upon the scheme of taxing them by parliamentary requisition, that Parliament should have some means of rendering its requisitions immediately effectual, in case the colony assemblies should attempt to evade or reject them; and what those means are, it is not very easy to conceive, and it has not yet been explained.

Should the Parliament of Great Britain, at the same time, be ever fully established in the right of taxing the colonies, even independent of the consent of their own assemblies, the importance of those assemblies would from that moment be at an end, and with it, that of all the leading men of British America. Men desire to have some share in the management of public affairs chiefly on account of the importance which it gives them. Upon the power which the greater part of the leading men, the natural aristocracy of every country, have of preserving or defending their respective importance, depends the stability and duration of every system of free government. In the attacks which those leading men are continually

making upon the importance of one another and in the defense of their own, consists the whole play of domestic faction and ambition. The leading men of America, like those of all other countries, desire to preserve their own importance. They feel, or imagine, that if their assemblies, which they are fond of calling parliaments, and of considering as equal in authority to the Parliament of Great Britain, should be so far degraded as to become the humble ministers and executive officers of that Parliament, the greater part of their own importance would be at an end. They have rejected, therefore, the proposal of being taxed by parliamentary requisition and like other ambitious and high-spirited men, have rather chosen to draw the sword in defense of their own importance.

Toward the declension of the Roman republic, the allies of Rome, who had borne the principal burden of defending the state and extending the empire, demanded to be admitted to all the privileges of Roman citizens. Upon being refused, the Social war broke out. During the course of that war Rome granted those privileges to the greater part of them, one by one, and in proportion as they detached themselves from the general confederacy. The Parliament of Great Britain insists upon taxing the colonies; and they refuse to be taxed by a Parliament in which they are not represented. If to each colony, which should detach itself from the general confederacy, Great Britain should allow such a number of representatives as suited the proportion of what it contributed to the public revenue of the empire, in consequence of its being subjected to the same taxes, and in compensation admitted to the same freedom of trade with its fellow-subjects at home; the number of its representatives to be augmented as the proportion of its contribution might afterward augment; a new method of acquiring importance, a new and more dazzling object of ambition would be presented to the leading men of each colony. Instead of piddling for the little prizes which are to be found in what may be called the paltry raffle of colony faction; they might then hope, from the presumption which men naturally have in their own ability

and good fortune, to draw some of the great prizes which sometimes come from the wheel of the great state lottery of British politics. Unless this or some other method is fallen upon, and there seems to be none more obvious than this of preserving the importance and of gratifying the ambition of the leading men of America, it is not very probable that they will ever voluntarily submit to us; and we ought to consider that the blood which must be shed in forcing them to do so, is, every drop of it, the blood either of those who are, or of those whom we wish to have for our fellow-citizens. They are very weak who flatter themselves that, in the state to which things have come, our colonies will be easily conquered by force alone. The persons who now govern the resolutions of what they call their Continental Congress, feel in themselves at this moment a degree of importance which, perhaps, the greatest subjects in Europe scarcely feel. From shopkeepers, tradesmen, and attorneys, they are become statesmen and legislators, and are employed in contriving a new form of government for an extensive empire, which, they flatter themselves, will become, and which, indeed, seems very likely to become, one of the greatest and most formidable that ever was in the world. Five hundred different people, perhaps, who in different ways act immediately under the Continental Congress; and five hundred thousand, perhaps, who act under those five hundred, all feel in the same manner a proportionable rise in their own importance. Almost every individual of the governing party in America, fills, at present, in his own fancy, a station superior, not only to what he had ever filled before, but to what he had ever expected to fill; and unless some new object of ambition is presented either to him or to his leaders, if he has the ordinary spirit of a man, he will die in defense of that station.

It is a remark of the president, Henaut, that we now read with pleasure the account of many little transactions of the Ligue, which when they happened were not perhaps considered as very important pieces of news. But every man then, says he, fancied himself of some importance; and the innumerable memoirs which have come down

to us from those times were, the greater part of them, written by people who took pleasure in recording and magnifying events in which, they flattered themselves, they had been considerable actors. How obstinately the city of Paris upon that occasion defended itself, what a dreadful famine it supported rather than submit to the best and afterward to the most beloved of all the French kings, is well known. The greater part of the citizens, or those who governed the greater part of them, fought in defense of their own importance, which they foresaw was to be at an end whenever the ancient government should be re-established. Our colonies, unless they can be induced to consent to a union, are very likely to defend themselves against the best of all mother countries, as obstinately as the city of Paris did against one of the best of kings.

The idea of representation was unknown in ancient times. When the people of one state were admitted to the right of citizenship in another, they had no other means of exercising that right but by coming in a body to vote and deliberate with the people of that other state. The admission of the greater part of the inhabitants of Italy to the privileges of Roman citizens, completely ruined the Roman republic. It was no longer possible to distinguish between who was and who was not a Roman citizen. No tribe could know its own members. A rabble of any kind could be introduced into the assemblies of the people, could drive out the real citizens, and decide upon the affairs of the republic as if they themselves had been such. But though America were to send fifty or sixty new representatives to Parliament, the doorkeeper of the House of Commons could not find any great difficulty in distinguishing between who was and who was not a member. Though the Roman constitution, therefore, was necessarily ruined by the union of Rome with the allied states of Italy, there is not the least probability that the British constitution would be hurt by the union of Great Britain with her colonies. That constitution, on the contrary, would be completed by it, and seems to be imperfect without it. The assembly which deliberates and decides concerning the

affairs of every part of the empire, in order to be properly informed, ought certainly to have representatives from every part of it. That this union, however, could be easily effectuated, or that difficulties and great difficulties might not occur in the execution, I do not pretend. I have yet heard of none, however, which appear insurmountable. The principal, perhaps, arise not from the nature of things, but from the prejudices and opinions of the people both on this and on the other side of the Atlantic.

We on this side the water are afraid lest the multitude of American representatives should overturn the balance of the Constitution, and increase too much either the influence of the Crown on the one hand, or the force of the democracy on the other. But if the number of American representatives were to be in proportion to the produce of American taxation, the number of people to be managed would increase exactly in proportion to the means of managing them; and the means of managing to the number of people to be managed. The monarchical and democratical parts of the Constitution would, after the union, stand exactly in the same degree of relative force with regard to one another as they had done before.

The people on the other side of the water are afraid lest their distance from the seat of government might expose them to many oppressions. But their representatives in Parliament, of which the number ought from the first to be considerable, would easily be able to protect them from all oppression. The distance could not much weaken the dependency of the representative upon the constituent, and the former would still feel that he owed his seat in Parliament, and all the consequence which he derived from it, to the good will of the latter. It would be to the interest of the former, therefore, to cultivate that good will by complaining, with all the authority of a member of the legislature, of every outrage which any civil or military officer might be guilty of in those remote parts of the empire. The distance of America from the seat of government, besides, the natives of that country might flatter themselves with some appearance of reason

too, would not be of very long continuance. Such has hitherto been the rapid progress of that country in wealth, population, and improvement, that in the course of little more than a century, perhaps, the produce of American might exceed that of British taxation. The seat of the empire would then naturally remove itself to that part of the empire which contributed most to the general defense and support of the whole.

The discovery of America and that of a passage to the East Indies by the Cape of Good Hope, are the two greatest and most important events recorded in the history of mankind. Their consequences have already been very great; but, in the short period of between two and three centuries which has elapsed since these discoveries were made, it is impossible that the whole extent of their consequences can have been seen. What benefits, or what misfortunes to mankind may hereafter result from those great events, no human wisdom can foresee. By uniting, in some measure, the most distant parts of the world, by enabling them to relieve one another's wants, to increase one another's enjoyments, and to encourage one another's industry, their general tendency would seem to be beneficial. To the natives, however, both of the East and West Indies, all the commercial benefits which can have resulted from those events have been sunk and lost in the dreadful misfortunes which they have occasioned. These misfortunes, however, seem to have arisen rather from accident than from anything in the nature of those events themselves. At the particular time when these discoveries were made, the superiority of force happened to be so great on the side of the Europeans that they were enabled to commit with impunity every sort of injustice in those remote countries. Hereafter, perhaps, the natives of those countries may grow stronger, or those of Europe may grow weaker, and the inhabitants of all the different quarters of the world may arrive at that equality of courage and force which, by inspiring mutual fear, can alone overawe the injustice of independent nations into some sort of respect for the rights of one another. But nothing seems more likely to establish this equality of

force than that mutual communication of knowledge and of all sorts of improvements which an extensive commerce from all countries to all countries naturally, or rather necessarily, carries along with it.

In the meantime one of the principal effects of those discoveries has been to raise the mercantile system to a degree of splendor and glory which it could never otherwise have attained to. It is the object of that system to enrich a great nation rather by trade and manufactures than by the improvement and cultivation of land, rather by the industry of the towns than by that of the country. But in consequence of those discoveries, the commercial towns of Europe, instead of being the manufacturers and carriers for but a very small part of the world (that part of Europe which is washed by the Atlantic ocean, and the countries which lie round the Baltic and Mediterranean seas) have now become the manufacturers for the numerous and thriving cultivators of America, and the carriers, and in some respects the manufacturers too, for almost all the different nations of Asia, Africa, and America. Two new worlds have been opened to their industry, each of them much greater and more extensive than the old one, and the market of one of them growing still greater and greater every day.

The countries which possess the colonies of America, and which trade directly to the East Indies, enjoy, indeed, the whole show and splendor of this great commerce. Other countries, however, notwithstanding all the invidious restraints by which it is meant to exclude them, frequently enjoy a greater share of the real benefit of it. The colonies of Spain and Portugal, for example, give more real encouragement to the industry of other countries than to that of Spain and Portugal. In the single article of linen alone the consumption of those colonies amounts, it is said, but I do not pretend to warrant the quantity, to more than three millions sterling a year. But this great consumption is almost entirely supplied by France, Flanders, Holland, and Germany. Spain and Portugal furnish but a small part of it. The capital which supplies the colonies with this great quantity of linen is annually distributed among, and furnishes a revenue to the inhabit-

ants of those other countries. The profits of it only are spent in Spain and Portugal, where they help to support the sumptuous profusion of the merchants of Cadiz and Lisbon.

Even the regulations by which each nation endeavors to secure to itself the exclusive trade of its own colonies, are frequently more hurtful to the countries in favor of which they are established than to those against which they are established. The unjust oppression of the industry of other countries falls back, if I may say so, upon the heads of the oppressors, and crushes their industry more than it does that of those other countries. By those regulations, for example, the merchant of Hamburg must send the linen which he destines for the American market to London, and he must bring back from thence the tobacco which he destines for the German market; because he can neither send the one directly to America, nor bring back the other directly from thence. By this restraint he is probably obliged to sell the one somewhat cheaper, and to buy the other somewhat dearer than he otherwise might have done; and his profits are probably somewhat abridged by means of it. In this trade, however, between Hamburg and London, he certainly receives the returns of his capital much more quickly than he could possibly have done in the direct trade to America, even though we should suppose, what is by no means the case, that the payments of America were as punctual as those of London. In the trade, therefore, to which those regulations confine the merchant of Hamburg, his capital can keep in constant employment a much greater quantity of German industry than it possibly could have done in the trade from which he is excluded. Though the one employment, therefore, may to him perhaps be less profitable than the other, it cannot be less advantageous to his country. It is quite otherwise with the employment into which the monopoly naturally attracts, if I may say so, the capital of the London merchant. That employment may, perhaps, be more profitable to him than the greater part of other employments, but, on account of the slowness of the returns, it cannot be more advantageous to his country.

After all the unjust attempts, therefore, of every country in Europe to engross to itself the whole advantage of the trade of its own colonies, no country has yet been able to engross to itself anything but the expense of supporting in time of peace and of defending in time of war the oppressive authority which it assumes over them. The inconveniencies resulting from the possession of its colonies, every country has engrossed to itself completely. The advantages resulting from their trade it has been obliged to share with many other countries.

At first sight, no doubt, the monopoly of the great commerce of America, naturally seems to be an acquisition of the highest value. To the undiscerning eye of giddy ambition, it naturally presents itself amidst the confused scramble of politics and war, as a very dazzling object to fight for. The dazzling splendor of the object, however, the immense greatness of the commerce, is the very quality which renders the monopoly of it hurtful, or which makes one employment, in its own nature necessarily less advantageous to the country than the greater part of other employments, absorb a much greater proportion of the capital of the country than what would otherwise have gone to it.

The mercantile stock of every country, it has been shown in the second book, naturally seeks, if one may say so, the employment most advantageous to that country. If it is employed in the carrying trade, the country to which it belongs becomes the emporium of the goods of all the countries whose trade that stock carries on. But the owner of that stock necessarily wishes to dispose of as great a part of those goods as he can at home. He thereby saves himself the trouble, risk, and expense, of exportation, and he will upon that account be glad to sell them at home, not only for a much smaller price, but with a somewhat smaller profit than he might expect to make by sending them abroad. He naturally, therefore, endeavors as much as he can to turn his carrying trade into a foreign trade of consumption. If his stock again is employed in a foreign trade of consumption, he will, for the same reason, be glad to dispose of at home as great a part as he can of the home goods, which he col-

lects in order to export to some foreign market, and he will thus endeavor, as much as he can, to turn his foreign trade of consumption into a home trade. The mercantile stock of every country naturally courts in this manner the near, and shuns the distant employment; naturally courts the employment in which the returns are frequent, and shuns that in which they are distant and slow; naturally courts the employment in which it can maintain the greatest quantity of productive labor in the country to which it belongs, or in which its owner resides, and shuns that in which it can maintain there the smallest quantity. It naturally courts the employment which in ordinary cases is most advantageous, and shuns that which in ordinary cases is least advantageous to that country.

But if in any of those distant employments, which in ordinary cases are less advantageous to the country, the profit should happen to rise somewhat higher than what is sufficient to balance the natural preference which is given to nearer employments, this superiority of profit will draw stock from those nearer employments, till the profits of all return to their proper level. This superiority of profit, however, is a proof that in the actual circumstances of the society those distant employments are somewhat understocked in proportion to other employments, and that the stock of the society is not distributed in the most proper manner among all the different employments carried on in it. It is a proof that something is either bought cheaper or sold dearer than it ought to be, and that some particular class of citizens is more or less oppressed either by paying more or by getting less than what is suitable to that equality, which ought to take place, and which naturally does take place among all the different classes of them. Though the same capital never will maintain the same quantity of productive labor in a distant as in a near employment, yet a distant employment may be as necessary for the welfare of the society as a near one; the goods which the distant employment deals in being necessary, perhaps, for carrying on many of the nearer employments. But if the profits of those who deal in such goods are above their proper level, those goods will be sold dearer than they

ought to be, or somewhat above their natural price, and all those engaged in the nearer employments will be more or less oppressed by this high price. Their interest, therefore, in this case requires that some stock should be withdrawn from those nearer employments, and turned toward the distant one, in order to reduce its profits to their proper level, and the price of the goods which it deals in to their natural price. In this extraordinary case, the public interest requires that some stock should be withdrawn from those employments which in ordinary cases are more advantageous, and turned toward one which in ordinary cases is less advantageous to the public, and in this extraordinary case, the natural interests and inclinations of men coincide as exactly with the public interest as in all other ordinary cases, and lead them to withdraw stock from the near, and to turn it toward the distant employment.

It is thus that the private interests and passions of individuals naturally dispose them to turn their stock toward the employments which in ordinary cases are most advantageous to the society. But if from this natural preference they should turn too much of it toward those employments, the fall of profit in them and the rise of it in all others immediately dispose them to alter this faulty distribution. Without any intervention of law, therefore, the private interests and passions of men naturally lead them to divide and distribute the stock of every society, among all the different employments carried on in it, as nearly as possible in the proportion which is most agreeable to the interest of the whole society.

All the different regulations of the mercantile system necessarily derange more or less this natural and most advantageous distribution of stock. But those which concern the trade to America and the East Indies derange it perhaps more than any other; because the trade to those two great continents absorbs a greater quantity of stock than any two other branches of trade. The regulations, however, by which this derangement is effected in those two different branches of trade are not altogether the same. Monopoly is the great engine of both; but it is a different sort of monopoly. Monopoly of one kind or another,

indeed, seems to be the sole engine of the mercantile system.

In the trade to America every nation endeavors to engross as much as possible the whole market of its own colonies, by fairly excluding all other nations from any direct trade to them. During the greater part of the sixteenth century, the Portuguese endeavored to manage the trade to the East Indies in the same manner, by claiming the sole right of sailing in the Indian seas, on account of the merit of having first found out the road to them. The Dutch still continue to exclude all other European nations from any direct trade to their spice islands. Monopolies of this kind are evidently established against all other European nations, who are thereby not only excluded from a trade to which it might be convenient for them to turn some part of their stock, but are obliged to buy the goods which that trade deals in somewhat dearer, than if they could import them themselves directly from the countries which produce them.

But since the fall of the power of Portugal, no European nation has claimed the exclusive right of sailing in the Indian seas, of which the principal ports are now open to the ships of all European nations. Except in Portugal, however, and within these few years in France, the trade to the East Indies has in every European country been subjected to an exclusive company. Monopolies of this kind are properly established against the very nation which erects them. The greater part of that nation are thereby not only excluded from a trade to which it might be convenient for them to turn some part of their stock, but are obliged to buy the goods which that trade deals in, somewhat dearer than if it were open and free to all their countrymen. Since the establishment of the English East India Company, for example, the other inhabitants of England, over and above being excluded from the trade, must have paid in the price of the East India goods which they have consumed, not only for all the extraordinary profits which the company may have made upon those goods in consequence of their monopoly, but for all the extraordinary waste which the fraud and abuse, inseparable from the manage-

ment of the affairs of so great a company, must necessarily have occasioned. The absurdity of this second kind of monopoly, therefore, is much more manifest than that of the first.

Both these kinds of monopolies derange more or less the natural distribution of the stock of the society: but they do not always derange it in the same way.

Monopolies of the first kind always attract to the particular trade in which they are established, a greater proportion of the stock of the society than what would go to that trade of its own accord.

Monopolies of the second kind may sometimes attract stock toward the particular trade in which they are established and sometimes repel it from that trade according to different circumstances. In poor countries they naturally attract toward that trade more stock than would otherwise go to it. In rich countries they naturally repel from it a good deal of stock which would otherwise go to it.

Such poor countries as Sweden and Denmark, for example, would probably have never sent a single ship to the East Indies, had not the trade been subjected to an exclusive company. The establishment of such a company necessarily encourages adventurers. Their monopoly secures them against all competitors in the home market, and they have the same chance for foreign markets with the traders of other nations. Their monopoly shows them the certainty of a great profit upon a considerable quantity of goods, and the chance of a considerable profit upon a great quantity. Without such extraordinary encouragement, the poor traders of such poor countries would probably never have thought of hazarding their small capitals in so very distant and uncertain an adventure as the trade to the East Indies must naturally have appeared to them.

Such a rich country as Holland, on the contrary, would probably, in the case of a free trade, send many more ships to the East Indies than it actually does. The limited stock of the Dutch East India Company probably repels from that trade many great mercantile capitals which would otherwise go to it. The mercantile capital

of Holland is so great that it is, as it were, continually overflowing, sometimes into the public funds of foreign countries, sometimes into loans to private traders and adventurers of foreign countries, sometimes into the most roundabout foreign trades of consumption, and sometimes into the carrying trade. All near employments being completely filled up, all the capital which can be placed in them with any tolerable profit being already placed in them, the capital of Holland necessarily flows toward the most distant employments. The trade to the East Indies, if it were altogether free, would probably absorb the greater part of this redundant capital. The East Indies offer a market both for the manufactures of Europe and for the gold and silver as well as for several other productions of America, greater and more extensive than both Europe and America put together.

Every derangement of the natural distribution of stock is necessarily hurtful to the society in which it takes place: whether it be by repelling from a particular trade the stock which would otherwise go to it, or by attracting toward a particular trade that which would not otherwise come to it. If, without any exclusive company, the trade of Holland to the East Indies would be greater than it actually is, that country must suffer a considerable loss by part of its capital being excluded from the employment most convenient to that part. And, in the same manner, if, without an exclusive company, the trade of Sweden and Denmark to the East Indies would be less than it actually is, or, what perhaps is more probable, would not exist at all, those two countries must likewise suffer a considerable loss by part of their capital being drawn into an employment which must be more or less unsuitable to their present circumstances. Better for them, perhaps, in their present circumstances, to buy East India goods of other nations, even though they should pay somewhat dearer, than to turn so great a part of their small capital to so very distant a trade, in which the returns are so very slow, in which that capital can maintain so small a quantity of productive labor at home, where productive labor is so much wanted, where so little is done, and where so much is to do.

Though without an exclusive company, therefore, a particular country should not be able to carry on any direct trade to the East Indies; it will not from thence follow that such a company ought to be established there, but only that such a country ought not in these circumstances to trade directly to the East Indies. That such companies are not in general necessary for carrying on the East India trade, is sufficiently demonstrated by the experience of the Portuguese, who enjoyed almost the whole of it for more than a century together without any exclusive company.

No private merchant, it has been said, could well have capital sufficient to maintain factors and agents in the different ports of the East Indies, in order to provide goods for the ships which he might occasionally send thither; and yet, unless he was able to do this, the difficulty of finding a cargo might frequently make his ships lose the season for returning, and the expense of so long a delay would not only eat up the whole profit of the adventure, but frequently occasion a very considerable loss. This argument, however, if it proved anything at all, would prove that no one great branch of trade could be carried on without an exclusive company, which is contrary to the experience of all nations. There is no great branch of trade in which the capital of any one private merchant is sufficient for carrying on all the subordinate branches which must be carried on, in order to carry on the principal one. But when a nation is ripe for any great branch of trade, some merchants naturally turn their capitals toward the principal, and some toward the subordinate branches of it; and though all the different branches of it are in this manner carried on, yet it very seldom happens that they are all carried on by the capital of one private merchant. If a nation, therefore, is ripe for the East India trade, a certain portion of its capital will naturally divide itself among all the different branches of that trade. Some of its merchants will find it for their interest to reside in the East Indies and to employ their capitals there in providing goods for the ships which are to be sent out by other merchants who reside in Europe. The settlements which

different European nations have obtained in the East Indies, if they were taken from the exclusive companies to which they at present belong, and put under the immediate protection of the sovereign, would render this residence both safe and easy, at least to the merchants of the particular nations to whom those settlements belong. If at any particular time that part of the capital of any country which of its own accord tended and inclined, if I may say so, toward the East India trade, was not sufficient for carrying on all those different branches of it, it would be a proof that, at that particular time, that country was not ripe for that trade, and that it would do better to buy for some time, even at a higher price, from other European nations, the East India goods it had occasion for, than to import them itself directly from the East Indies. What it might lose by the high price of those goods could seldom be equal to the loss which it would sustain by the distraction of a large portion of its capital from other employments more necessary, or more useful, or more suitable to its circumstances and situation, than a direct trade to the East Indies.

Though the Europeans possess many considerable settlements both upon the coast of Africa and in the East Indies, they have not yet established in either of those countries such numerous and thriving colonies as those in the islands and continent of America. Africa, however, as well as several of the countries comprehended under the general name of the East Indies, are inhabited by barbarous nations. But those nations were by no means so weak and defenseless as the miserable and helpless Americans; and in proportion to the natural fertility of the countries which they inhabited, they were besides much more populous. The most barbarous nations either of Africa or of the East Indies were shepherds; even the Hottentots were so. But the natives of every part of America, except Mexico and Peru, were only hunters; and the difference is very great between the number of shepherds and that of hunters whom the same extent of equally fertile territory can maintain. In Africa and the East Indies, therefore, it was more difficult to displace the natives, and to extend the European plantations over

the greater part of the lands of the original inhabitants. The genius of exclusive companies, besides, is unfavorable, it has already been observed, to the growth of new colonies, and has probably been the principal cause of the little progress which they have made in the East Indies. The Portuguese carried on the trade both to Africa and the East Indies without any exclusive companies, and their settlements at Congo, Angola, and Benguela on the coast of Africa, and at Goa in the East Indies, though much depressed by superstition and every sort of bad government, yet bear some faint resemblance to the colonies of America, and are partly inhabited by Portuguese who have been established there for several generations. The Dutch settlements at the Cape of Good Hope and at Batavia, are at present the most considerable colonies which the Europeans have established either in Africa or in the East Indies, and both these settlements are peculiarly fortunate in their situation. The Cape of Good Hope was inhabited by a race of people almost as barbarous and quite as incapable of defending themselves as the natives of America. It is besides the half-way house, if one may say so, between Europe and the East Indies, at which almost every European ship makes some stay both in going and returning. The supplying of those ships with every sort of fresh provisions, with fruit and sometimes with wine, affords alone a very extensive market for the surplus produce of the colonists. What the Cape of Good Hope is between Europe and every part of the East Indies, Batavia is between the principal countries of the East Indies. It lies upon the most frequented road from Indostan to China and Japan, and is nearly about mid-way upon that road. Almost all the ships too that sail between Europe and China touch at Batavia; and it is, over and above all this, the center and principal mart of what is called the country trade of the East Indies; not only of that part of it which is carried on by Europeans, but of that which is carried on by the native Indians; and vessels navigated by the inhabitants of China and Japan, of Tonquin, Malacca, Cochin China, and the island of Celebes, are frequently to be seen in its port. Such advantageous situations have

enabled those two colonies to surmount all the obstacles which the oppressive genius of an exclusive company may have occasionally opposed to their growth. They have enabled Batavia to surmount the additional disadvantage of perhaps the most unwholesome climate in the world.

The English and Dutch companies, though they have established no considerable colonies, except the two above mentioned, have both made considerable conquests in the East Indies. But in the manner in which they both govern their new subjects, the natural genius of an exclusive company has shown itself most distinctly. In the spice islands the Dutch are said to burn all the spiceries which a fertile season produces beyond what they expect to dispose of in Europe with such a profit as they think sufficient. In the islands where they have no settlements, they give a premium to those who collect the young blossoms and green leaves of the clove and nutmeg trees which naturally grow there, but which this savage policy has now, it is said, almost completely extirpated. Even in the islands where they have settlements they have very much reduced, it is said, the number of those trees. If the produce even of their own islands was much greater than what suited their market, the natives, they suspect, might find means to convey some part of it to other nations; and the best way, they imagine, to secure their own monopoly, is to take care that no more shall grow than what they themselves carry to market. By different arts of oppression they have reduced the population of several of the Moluccas nearly to the number which is sufficient to supply with fresh provisions and other necessaries of life their own insignificant garrisons, and such of their ships as occasionally come there for a cargo of spices. Under the government even of the Portuguese, however, those islands are said to have been tolerably well inhabited. The English company have not yet had time to establish in Bengal so perfectly destructive a system. The plan of their government, however, has had exactly the same tendency. It has not been uncommon, I am well assured, for the chief, that is, the first clerk of a factory, to order a peasant to plow up a rich field of poppies, and sow it with rice or some other grain. The

pretense was, to prevent a scarcity of provisions; but the real reason, to give the chief an opportunity of selling at a better price a large quantity of opium, which he happened then to have upon hand. Upon other occasions the order has been reversed; and a rich field of rice or other grain has been plowed up, in order to make room for a plantation of poppies; when the chief foresaw that extraordinary profit was likely to be made by opium. The servants of the company have upon several occasions attempted to establish in their own favor the monopoly of some of the most important branches, not only of the foreign, but of the inland trade of the country. Had they been allowed to go on, it is impossible that they should not at some time or another have attempted to restrain the production of the particular articles of which they had thus usurped the monopoly, not only to the quantity which they themselves could purchase, but to that which they could expect to sell with such a profit as they might think sufficient. In the course of a century or two, the policy of the English company would in this manner have probably proved as completely destructive as that of the Dutch.

Nothing, however, can be more directly contrary to the real interest of those companies, considered as the sovereigns of the countries which they have conquered, than this destructive plan. In almost all countries the revenue of the sovereign is drawn from that of the people. The greater the revenue of the people, therefore, the greater the annual produce of their land and labor, the more they can afford to the sovereign. It is his interest, therefore, to increase as much as possible that annual produce. But if this is the interest of every sovereign, it is peculiarly so of one whose revenue, like that of the sovereign of Bengal, arises chiefly from a land rent. That rent must necessarily be in proportion to the quantity and value of the produce, and both the one and the other must depend upon the extent of the market. The quantity will always be suited with more or less exactness to the consumption of those who can afford to pay for it, and the price which they will pay will always be in proportion to the eagerness of their competition. It

is the interest of such a sovereign, therefore, to open the most extensive market for the produce of his country, to allow the most perfect freedom of commerce, in order to increase as much as possible the number and the competition of buyers; and upon this account to abolish, not only all monopolies, but all restraints upon the transportation of the home produce from one part of the country to another, upon its exportation to foreign countries, or upon the importation of goods of any kind for which it can be exchanged. He is in this manner most likely to increase both the quantity and value of that produce, and consequently of his own share of it, or of his own revenue.

But a company of merchants are, it seems, incapable of considering themselves as sovereigns, even after they have become such. Trade, or buying in order to sell again, they still consider as their principal business, and by a strange absurdity, regard the character of the sovereign, as but an appendix to that of the merchant, as something which ought to be made subservient to it, or by means of which they may be enabled to buy cheaper in India, and thereby to sell with a better profit in Europe. They endeavor for this purpose to keep out as much as possible all competitors from the market of the countries which are subject to their government, and consequently to reduce, at least, some part of the surplus produce of those countries to what is barely sufficient for supplying their own demand, or to what they can expect to sell in Europe with such a profit as they may think reasonable. Their mercantile habits draw them in this manner, almost necessarily, though perhaps insensibly, to prefer upon all ordinary occasions the little and transitory profit of the monopolist to the great and permanent revenue of the sovereign, and would gradually lead them to treat the countries subject to their government nearly as the Dutch treat the Moluccas. It is the interest of the East India Company considered as sovereigns, that the European goods which are carried to their Indian dominions should be sold there as cheap as possible; and that the Indian goods which are brought from thence should bring there as good a price, or should be

sold there as dear as possible. But the reverse of this is their interest as merchants. As sovereigns, their interest is exactly the same with that of the country which they govern. As merchants, their interest is directly opposite to that interest.

But if the genius of such a government, even as to what concerns its direction in Europe, is in this manner essentially and perhaps incurably faulty, that of its administration in India is still more so. That administration is necessarily composed of a council of merchants, a profession no doubt extremely respectable, but which in no country in the world carries along with it that sort of authority which naturally overawes the people, and without force commands their willing obedience. Such a council can command obedience only by the military force with which they are accompanied, and their government is therefore necessarily military and despotical. Their proper business, however, is that of merchants. It is to sell, upon their masters' account, the European goods consigned to them, and to buy in return Indian goods for the European market. It is to sell the one as dear and to buy the other as cheap as possible, and consequently to exclude as much as possible all rivals from the particular market where they keep their shop. The genius of the administration, therefore, so far as concerns the trade of the company, is the same as that of the direction. It tends to make government subservient to the interest of monopoly, and consequently to stunt the natural growth of some parts at least of the surplus produce of the country to what is barely sufficient for answering the demand of the company.

All the members of the administration, besides, trade more or less upon their own account, and it is in vain to prohibit them from doing so. Nothing can be more completely foolish than to expect that the clerks of a great countinghouse at ten thousand miles distance, and consequently almost quite out of sight, should, upon a simple order from their masters, give up at once doing any sort of business upon their own account, abandon forever all hopes of making a fortune, of which they have the means in their hands, and content themselves with

the moderate salaries which those masters allow them, and which, moderate as they are, can seldom be augmented, being commonly as large as the real profits of the company's trade can afford. In such circumstances, to prohibit the servants of the company from trading upon their own account, can have scarce any other effect than to enable the superior servants, under pretense of executing their masters' order, to oppress such of the inferior ones as have had the misfortune to fall under their displeasure. The servants naturally endeavor to establish the same monopoly in favor of their own private trade as of the public trade of the company. If they are suffered to act as they could wish, they will establish this monopoly openly and directly, by fairly prohibiting all other people from trading in the articles in which they choose to deal; and this, perhaps, is the best and least oppressive way of establishing it. But if by an order from Europe they are prohibited from doing this, they will, notwithstanding, endeavor to establish a monopoly of the same kind, secretly and indirectly, in a way that is much more destructive to the country. They will employ the whole authority of government, and pervert the administration of justice, in order to harass and ruin those who interfere with them in any branch of commerce which, by means of agents, either concealed or at least not publicly avowed, they may choose to carry on. But the private trade of the servants will naturally extend to a much greater variety of articles than the public trade of the company. The public trade of the company extends no further than the trade with Europe, and comprehends a part only of the foreign trade of the country. But the private trade of the servants may extend to all the different branches both of its inland and foreign trade. The monopoly of the company can tend only to stunt the natural growth of that part of the surplus produce which, in the case of a free trade, would be exported to Europe. That of the servants tends to stunt the natural growth of every part of the produce in which they choose to deal, of what is destined for home consumption, as well as of what is destined for exportation; and consequently to degrade the cultivation of the

whole country, and to reduce the number of its inhabitants. It tends to reduce the quantity of every sort of produce, even that of the necessaries of life, whenever the servants of the company choose to deal in them, to what those servants can both afford to buy and expect to sell with such a profit as pleases them.

From the nature of their situation, too, the servants must be more disposed to support with rigorous severity their own interest against that of the country which they govern, than their masters can be to support theirs. The country belongs to their masters, who cannot avoid having some regard for the interest of what belongs to them. But it does not belong to the servants. The real interest of their masters, if they were capable of understanding it, is the same with that of the country, and it is from ignorance chiefly, and the meanness of mercantile prejudice, that they ever oppress it. But the real interest of the servants is by no means the same with that of the country, and the most perfect information would not necessarily put an end to their oppressions. The regulations, accordingly, which have been sent out from Europe, though they have been frequently weak, have upon most occasions been well-meaning. More intelligence and perhaps less good-meaning has sometimes appeared in those established by the servants in India. It is a very singular government in which every member of the administration wishes to get out of the country, and consequently to have done with the government, as soon as he can, and to whose interest, the day after he has left it and carried his whole fortune with him, it is perfectly indifferent though the whole country be swallowed up by an earthquake.

I mean not, however, by anything which I have here said, to throw any odious imputation upon the general character of the servants of the East India Company, and much less upon that of any particular persons. It is the system of government, the situation in which they are placed, that I mean to censure; not the character of those who have acted in it. They acted as their situation naturally directed, and they who have clamored the loudest against them would, probably, not have acted

better themselves. In war and negotiation, the councils of Madras and Calcutta have upon several occasions conducted themselves with a resolution and decisive wisdom which would have done honor to the senate of Rome in the best days of that republic. The members of those councils, however, had been bred to professions very different from war and politics. But their situation alone, without education, experience, or even example, seems to have formed in them all at once the great qualities which it required, and to have inspired them both with abilities and virtues which they themselves could not well know that they possessed. If upon some occasions, therefore, it has animated them to actions of magnanimity which could not well have been expected from them, we should not wonder if upon others it has prompted them to exploits of a somewhat different nature.

Such exclusive companies, therefore, are nuisances in every respect; always more or less inconvenient to the countries in which they are established, and destructive to those which have the misfortune to fall under their government.